**R68. Agriculture and Food, Plant Industry.**
**R68-7. Utah Pesticide Control Act.**
**R68-7-1. Authority.**

Promulgated under authority of Section 4-14-6.

**R68-7-2. Registration of Products.**

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-3(1).

(7) The department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-3 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-5 of the Utah Pesticide Control Act.

(10) A registration fee determined by the department, pursuant to Subsection 4-2-2(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-2(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

**R68-7-3. Product Labeling.**

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-4.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

**R68-7-4. Classification of Pesticides.**

The commissioner shall classify all pesticide products registered in Utah for "restricted use" or "general use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. He may also restrict the use of additional pesticides if he finds that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

**R68-7-5. Classification of Pesticide Applicators.**

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

**R68-7-6. Categorization of Pesticide Applicators.**

Applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control pests in the

maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on home foundations, sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and around buildings.

(8) Public Health Pest Control. This category includes applicators applying the use of pesticides in public- health programs for the management and control of pests having medical and public-health importance.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal, employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal, employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

**R68-7-7. Standards of Competence for Certification of Applicators.**

Applicators must show competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-4 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Private Applicators. Private applicators shall show practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his supervision when the certified applicator is not required to be physically present.

If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

**R68-7-8. Certification Procedures.**

(A) Commercial Applicators.

(1) License Required. No person shall apply any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide applicator business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 2-5 commercial pesticide applicators and 10 or more commercial pesticide applicators.

Application for such licenses shall be made in writing on an approved form obtained from the department and shall include such information as prescribed by the department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed. An applicator and business license fee determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the department shall issue a commercial applicator's license. The license shall expire December 31 of each year unless it has been revoked or suspended prior by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification.

(a) A license will be renewed without examination if the renewal notice is received by the Utah Department of Agriculture and Food of prior to January 1 of any year.

(b) If the renewal notice is received after January 1 but before (March 1), individuals will be required to pay the late fee, and no re-examination will be required.

(c) If the renewal notice is received after March 1, individuals will be required to recertify according to the original pesticide-applicator certification procedures. Each license shall expire on December 31 of the year of its issuance. Commercial applicators may voluntarily pay a triennial license fee in lieu of the annual license fee. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(d) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, is not engaged in the business of applying pesticides for hire or compensation, does not publicly represent himself as a pesticide applicator, and operates his pesticide application equipment only in the vicinity of his owned or rented property for the accommodation of his neighbors; provided, however, that when such persons use a restricted-use pesticide, they shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the department. Application for such license shall be made in writing on an approved form obtained from the department and shall include such information as is prescribed by the department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way.

(3) License Issuance. If the department finds the applicant qualified to apply pesticides in the classification(s) applied for, the department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. A prescribed examination and educational material fees shall be required. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application.

If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Renewal, Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfying certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticides. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area, and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions, from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-

material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests replacement from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to : (a) read and understand three or more sets of pesticide label directions, from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the department, by satisfying any of the following procedures or any other requirements specified by the department.

(a) Training Course. Completion of a training course approved by the Utah Department of Agriculture and Food which may require passing a written test with a score of 70% or above or;

(b) Self-Study Program. Successful completion of an approved written test. A passing score of 70 percent or above is required or;

(c) Written Examination. Successful completion of an approved written test. A score of 70 percent or above is required to pass or;

(d) Accumulate nine credits of approved continuing education during the valid three years of certification.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

**R68-7-9. Dealer Licensing.**

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained an annual license from the department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer's license for his principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a license fee determined by the department pursuant to subsection 4-2-2(2). If the department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the department shall issue a restricted-use pesticides dealer's license. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. This license shall expire December 31 of each year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-11.

(3) License Renewal. License-renewal fees are payable annually before January 1. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. If the renewal of a pesticide dealer's license is not received prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides shall be required by the department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. A register form, provided by the department, shall include the following information:

(a) The name and address of the purchaser.

(b) Brand name of restricted-use pesticide purchased.

(c) EPA registration number of restricted-use pesticide purchased.

(d) Month, day and year of purchase.

(e) Quantity purchased.

(f) Signature and license number of the purchaser, pesticide category, expiration date of license, or signature of purchaser's agent (uncertified person) if letter of authorization is on file. Letter of authorization must include names of agents, signature and license number of purchaser.

Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provide restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(6) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted-use pesticides

and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

**R68-7-10. Transportation, Storage and Disposal of Pesticides and Pesticide Containers.**

No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or to pollute any waterway in a manner harmful to any wildlife therein.

**R68-7-11. Unlawful Acts.**

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

**KEY: inspections**
**January 7, 2008 4-14-6**
**Notice of Continuation March 16, 2006**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-1. General Rules of the Division of Occupational and Professional Licensing.**
**R156-1-101. Title.**

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

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

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

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

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

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

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

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division regulatory and compliance officer, or if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer, or if both the division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

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

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

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

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

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

(a) Mitigating circumstances include:

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

(ii) absence of dishonest or selfish motive;

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

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

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

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

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as

mitigating circumstances:

(i) forced or compelled restitution;

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

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(33) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

**R156-1-102a. Global Definitions of Levels of Supervision.**

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

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

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

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

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is

properly authorized and shall not be sold or otherwise redisclosed by the requester:

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

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

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

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

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

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

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

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

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

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

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

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

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

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

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

109(2).

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

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

(a) Commission.

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

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

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

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

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

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

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

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

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-

106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

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

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

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

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

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

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

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

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

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

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

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

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

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

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

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

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

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

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

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

**R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.**

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the division's Internet Renewal System.

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

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

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

(2) mitigating circumstances, as defined in Subsection R156-1-102(17);

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

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

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

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

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

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

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

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

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

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

(13) psychological evaluations; or

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

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

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

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

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

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

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

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

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

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

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

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

TABLE
RENEWAL DATES

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

| | | | |
|---|---|---|---|
| | Physician | | |
| (52) | Occupational Therapist | May 31 | odd years |
| (53) | Occupational Therapy Assistant | May 31 | odd years |
| (54) | Optometrist | September 30 | even years |
| (55) | Osteopathic Physician and Surgeon | May 31 | even years |
| (56) | Pharmacy (Class A-B-C-D-E) | September 30 | odd years |
| (57) | Pharmacist | September 30 | odd years |
| (58) | Pharmacy Technician | September 30 | odd years |
| (59) | Physical Therapist | May 31 | odd years |
| (60) | Physician Assistant | May 31 | even years |
| (61) | Physician and Surgeon | January 31 | even years |
| (62) | Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman | November 30 | even years |
| (63) | Podiatric Physician | September 30 | even years |
| (64) | Pre Need Funeral Arrangement Provider | May 31 | even years |
| (65) | Pre Need Funeral Arrangement Sales Agent | May 31 | even years |
| (66) | Private Probation Provider | May 31 | odd years |
| (67) | Professional Counselor | September 30 | even years |
| (68) | Professional Engineer | March 31 | odd years |
| (69) | Professional Geologist | March 31 | odd years |
| (70) | Professional Land Surveyor | March 31 | odd years |
| (71) | Professional Structural Engineer | March 31 | odd years |
| (72) | Psychologist | September 30 | even years |
| (73) | Radiology Practical Technician | May 31 | odd years |
| (74) | Radiology Technologist | May 31 | odd years |
| (75) | Recreational Therapy Technician, Specialist, Master Specialist | May 31 | odd years |
| (76) | Registered Nurse | January 31 | odd years |
| (77) | Respiratory Care Practitioner | September 30 | even years |
| (78) | Security Personnel | November 30 | even years |
| (79) | Social Service Worker | September 30 | even years |
| (80) | Speech-Language Pathologist | May 31 | odd years |
| (81) | Veterinarian | September 30 | even years |

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

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

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

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

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

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

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

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

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

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

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

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

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

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

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

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

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of

the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

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

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

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

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

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

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

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

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

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

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

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

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

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

(e) A notice of unconditional denial or partial denial of licensure to an applicant the division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation of prior licensure in the State of Utah;

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

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

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

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

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

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

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

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owes to the Division prior to the expiration of license.

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

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

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

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

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

(d) pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.**

Except as otherwise governed by the terms of an order issued by the division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

**R156-1-310. Cheating on Examinations.**

(1) Policy.

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

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the

results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

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

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

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

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

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

(4) Notification.

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

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

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

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

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

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

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

The duties of diversion committees shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing

rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

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

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

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

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

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

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) a mechanism for the physician to have ready access to all patients' records.

**KEY: diversion programs, licensing, occupational licensing, supervision**

| | |
|---|---|
| **January 8, 2008** | **58-1-106(1)(a)** |
| **Notice of Continuation March 1, 2007** | **58-1-308** |
| | **58-1-501(4)** |

**R156. Commerce, Occupational and Professional Licensing.**
**R156-38a. Residence Lien Restriction and Lien Recovery Fund Rule.**
**R156-38a-101. Title.**

This rule is known as the "Residence Lien Restriction and Lien Recovery Fund Act Rule."

**R156-38a-102. Definitions.**

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to this rule, as used in this rule:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

(3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(4)(a).

(4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(5) "Homeowner" means the owner of an owner-occupied residence.

(6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(4) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(7) "Necessary party" includes the division, on behalf of the fund, and the applicant.

(8) "Owner", as defined in Subsection 38-11-102(17), does not include any person or developer who builds residences that are offered for sale to the public.

(9) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(10) "Qualified services", as used in Subsection 38-11-102(20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

(11) "Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

(a) an offer or agreement conveyed for qualified services that will be performed in the future;

(b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and

(c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

**R156-38a-103a. Authority - Purpose - Organization.**

(1) This rule is adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of this rule is patterned after the organization of Title 38, Chapter 11.

**R156-38a-103b. Duties, Functions, and Responsibilities of the Division.**

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or this rule, be in accordance with Section 58-1-106.

**R156-38a-104. Board.**

Board meetings shall comply with the requirements set forth in Section R156-1-204.

**R156-38a-105a. Adjudicative Proceedings.**

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or this rule.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the

presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the division's records; or

(b) if the lien claimant is not a licensee of the division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

**R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.**

(1)(a) A written notice of denial of claim shall be provided to an applicant who submits a complete application if the division determines that the application does not meet the requirements of Section 38-11-204.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:

(a) has made all reasonable efforts to complete the application;

(b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the application if an additional extension is granted.

(3)(a) An applicant may for any reason be granted a single request that its application be prolonged.

(b) An application granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

(c) At the end of the one year period, the applicant shall be required to either complete the application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of an application, the division shall issue to the applicant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the applicant an opportunity to:

(i) reactivate the application by submitting documentation necessary to complete the application;

(ii) withdraw the application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If an applicant's request for renewal of prolonged status is denied, the applicant may request agency review.

(g) An application which has been reactivated from prolonged status may not be again prolonged unless the applicant can establish compliance with the requirements of Subsection (3)(c).

**R156-38a-108. Notification of Rights under Title 38, Chapter 11.**

A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

**R156-38a-109. Format for Form Affidavit and Motion.**

The form affidavit required under Subsection 38-1-11(4) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

**R156-38a-202a. Initial Assessment Procedures.**

The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

**R156-38a-202b. Special Assessment Procedures.**

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Section 38-11-206.

**R156-38a-203. Limitation on Payment of Claims.**

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b);

(b) sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit;

(c) divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio; and

(d) for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net payment for each claim.

**R156-38a-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.**

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowner and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the real estate developer had an ownership interest in the property;

(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act who engages in the construction of a residence that is offered for sale to the public:

(i) credible evidence that the contractor real estate developer has an ownership interest in the property;

(ii) a copy of the contract between the homeowner and the contractor real estate developer;

(iii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (5), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

(5) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

**R156-38a-204b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.**

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(b) the documents required in Section R156-38a-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(2)(a) a copy of the applicant's notice to hold and claim lien recorded against the incident residence pursuant to Section 38-1-7; or

(b) if the applicant did not record notice to hold and claim lien, one of the following as applicable:

(i) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(ii) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(iii) if neither Subsection(2)(b)(i) nor (2)(b)(ii) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor

substantially completed the written contract;

(3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(8) If the claimant is requesting payment of costs and attorney fees other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the division to apply the requirements set forth in Section R156-38a-204d.

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

**R156-38a-204c. Claims Against the Fund by Laborers - Supporting Documents.**

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of nonpayment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

**R156-38a-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.**

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other

costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.

(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance.

**R156-38a-204e. Application of Requirement that Nonpaying Party be Licensed.**

The provisions of Subsection 38-11-204(4)(f) shall apply only to qualified services provided by the claimant on or after May 3, 2004.

**R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.**

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

| Primary Classification Number | Subclassification Number | Classification |
|---|---|---|
| E100 | | General Engineering Contractor |
| | S211 | Boiler Installation Contractor |
| | S213 | Industrial Piping Contractor |
| | S262 | Granite and Pressure Grouting Contractor |
| S320 | | Steel Erection Contractor |
| | S321 | Steel Reinforcing Contractor |
| | S322 | Metal Building Erection Contractor |
| | S323 | Structural Stud Erection Contractor |
| S340 | | Sheet Metal Contractor |
| S360 | | Refrigeration Contractor |
| S440 | | Sign Installation Contractor |
| | S441 | Non Electrical Outdoor Advertising Sign Contractor |
| S450 | | Mechanical Insulation Contractor |
| S470 | | Petroleum System Contractor |
| S480 | | Piers and Foundations Contractor |
| I101 | | General Engineering Trades Instructor |
| I102 | | General Building Trades Instructor |
| I103 | | General Electrical Trades Instructor |
| I104 | | General Plumbing Trades Instructor |
| I105 | | General Mechanical Trades Instructor |

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) all unpaid special assessments.

**R156-38a-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.**

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

**R156-38a-302. Renewal and Reinstatement Procedures.**

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

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

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal

requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

**R156-38a-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.**

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

**KEY: licensing, contractors, liens**

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| **January 7, 2008** | **38-11-101** |
| **Notice of Continuation March 15, 2005** | **58-1-106(1)(a)** |
| | **58-1-202(1)(a)** |

**R156. Commerce, Occupational and Professional Licensing.**
**R156-76. Professional Geologist Licensing Act Rule.**
**R156-76-101. Title.**

This rule is known as the "Professional Geologist Licensing Act Rule".

**R156-76-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 76, as used in Title 58, Chapters 1 and 76, or this rule:

(1) "ASBOG" means Association of State Boards of Geology.

(2) "Geosciences", as used in Subsection 58-76-302(4)(a), means an earth science degree, which results in sufficient geological knowledge to enable the practice of geology before the public.

(3) "Qualified individual", as used in Section R156-76-302c, means a person who is licensed as a professional geologist in a recognized jurisdiction, or who otherwise meets the requirements for licensure as defined in Sections 58-76-302 and R156-76-302b and R156-76-302c.

(4) "Practice of geology before the public", as used in Subsection 58-76-102(3) does not include the following activities:

(a) routine sampling, laboratory work or geological drafting, where the elements of initiative, scientific judgment, and decision-making are lacking;

(b) data acquisition where geological interpretation is minimal and incidental (for example mud-logging, wireline logging, rock property measurements, dating, and geochemical, geophysical and biological surveys);

(c) the following aspects of paleontology:

(i) taxonomy;

(ii) biologic analysis of organisms; or

(iii) investigation and reporting of deposits which may be fossiliferous, including incidental geological analysis; or

(d) the following aspects of the practice of anthropology and archeology:

(i) archeological survey, excavation, and reporting;

(ii) production of archeological plan views, profiles, and regional overviews; or

(iii) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.

(5) "Principal", as used in Subsection 58-76-603(2), means the licensee assigned to and personally accountable for the production of specified professional geologic projects within an organization.

(6) "Recognized jurisdiction", as used in Subsection R156-76-302d(2), means any state, district or territory of the United States that issues a license for a professional geologist, and whose licensure requirements include:

(a) a bachelors or post graduate degree in the geosciences from an accredited institution or equivalent foreign education as determined by the International Credentialing Association and the Division in collaboration with the board;

(b) documented qualifying experience requirements similar to the experience requirements found in Subsection 58-76-302(5) and Section R156-76-302; and

(c) passing the ASBOG Fundamentals of Geology (FG) and the ASBOG Principles and Practice of Geology (PG) Examination.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 76, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-76-502.

**R156-76-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 76.

**R156-76-104. 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.

**R156-76-302b. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Section 58-76-302, the education requirements for graduates of an approved geoscience program are as follows:

(a) an earned bachelors or masters degree in geology from an accredited institution; or

(b) an earned bachelor or post-graduate degree in the geosciences from an accredited institution including the completion of a minimum of 24 semester or 36 quarter hours in upper level or graduate geology courses, which includes one or more of the following subject areas:

(i) structural geology;

(ii) geophysics;

(iii) sedimentology/stratigraphy/paleontology;

(iv) mineralogy/petrology/geochemistry;

(v) engineering geology/environmental geology;

(vi) hydrogeology/hydrology;

(vii) geomorphology/remote sensing;

(viii) economic geology/petroleum geology; and

(ix) field geology.

(2) In accordance with Section 58-1-302, an applicant who has been educated in a foreign country shall submit a course-by-course accreditation evaluation completed by International Credentialing Associates to determine program equivalency.

**R156-76-302c. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsection 58-76-302(5), active professional practice requirements are clarified or established as follows:

(1) Professional practice shall be obtained after completing the minimum educational requirement for licensure.

(2) One year of active professional practice shall consist of a minimum of 2,000 hours of geological work experience under the supervision of a qualified individual, or in responsible charge as permitted by law.

(3) No more than 2,000 hours of active professional practice may be gained in any 12 month period of time.

(4) Qualifying work engagements consist of a range of activities included in the practice of geology consisting of more than the performance or supervision of geological work activities that are routine, such as routine sampling, laboratory work, or geological drafting, where the elements of initiative, scientific judgment and decision-making are lacking.

(5) Three years of geologic research or teaching activity in upper division or graduate level geology classes at an accredited university is equivalent to one year of qualifying experience.

**R156-76-302d. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-76-302(6), except as otherwise provided in Subsection (2) or(3), the examination requirements for licensure as a professional geologist after January 1, 2004 are established as follows:

(a) the ASBOG Fundamentals of Geology ("FG") Examination with a passing score as recommended by the ASBOG; and

(b) the ASBOG Principles and Practice of Geology ("PG") Examination with a passing score as established by the ASBOG.

(2) The ASBOG FG Examination shall not be required for an applicant who:

(a) has practiced as a principal for five years of the last seven years preceding the date of the license application;

(b) was not required to pass the ASBOG FG Examination

for initial licensure from the recognized jurisdiction the applicant was originally licensed; and

(c) has passed the ASBOG PG Examination.

(3) The ASBOG FG and PG Examinations shall not be required for an applicant who:

(a) has practiced as a principal for five years during the last seven years preceding the date of the license application;

(b) has been licensed for 20 years preceding the date of the license application; and

(c) who was not required to pass the ASBOG FG and PG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed, but was required to pass a predecessor exam established by the recognized jurisdiction.

**R156-76-303. Renewal Cycle - Procedures.**

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 76, is established by rule in Section R156-1-308.

**R156-76-304. Exemption from Licensure.**

The exemption from licensure in Subsection 58-76-304(1) is defined or clarified as follows: An "employee" or "subordinate", as used therein and elsewhere in Title 58, Chapter 76, or this rule, means an individual who:

(1) is not licensed as a professional geologist;

(2) works with, for, or provides professional geologic services on work initiated by a person licensed as a professional geologist; and

(3) works only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed as a professional geologist.

**R156-76-501. Administrative Penalties - Unlawful Conduct.**

In accordance with Sections 58-76-501 and 58-76-502 and Subsections 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of geology as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permitted any person to use his license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall 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 58-76-502(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

**R156-76-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "American Geological Institute's Guidelines for Ethical Professional Conduct", April 2, 1999, which is hereby incorporated by reference.

**R156-76-601. Seal Requirements.**

(1) In accordance with Section 58-76-601, the seal design and implementation shall be:

(a) each seal shall be a circular seal, 1-1/2 inches minimum diameter;

(b) each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Professional Geologist";

(c) each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint;

(d) each original set of final geologic map, cross-section, sketch, drawing, plan, or report prepared, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet;

(e) a seal may be a wet stamp, embossed, or electronically produced; and

(f) copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date are permitted, if the seal, signature and date is clearly recognizable.

**KEY: licensing, professional geologists, geology**

**January 8, 2008** **58-1-106(1)(a)**

**Notice of Continuation May 1, 2007** **58-1-202(1)(a)**

**58-76-101**

**R270. Crime Victim Reparations, Administration.**
**R270-1. Award and Reparation Standards.**
**R270-1-1. Authorization and Purpose.**

As provided in Section 63-25a-406 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

**R270-1-2. Funeral and Burial Award.**

A. Pursuant to Subsection 63-25a-411(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

**R270-1-3. Negligent Homicide and Hit and Run Claims.**

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63-25a-402(9).

B. Pursuant to Subsection 63-25a-402(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

**R270-1-4. Counseling Awards.**

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a $2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. Inpatient hospitalization, residential and day treatment shall be reviewed by the CVR Board or contracting agency who will make recommendations to the Reparation Officers regarding treatment. The CVR Board or contracting agency will review all levels of care and assign a reimbursement percentage based on the crime. All cases having less than a $1000 balance may be determined by the Reparation Officer. Outpatient cases shall be reviewed at the same rate as inpatient reviews.

8. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

9. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

10. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

11. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

12. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

13. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

14. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working

towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

15. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

**R270-1-5. Attorney Fees.**

Pursuant to Subsection 63-25a-424(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

**R270-1-6. Reparation Awards.**

Pursuant to Section 63-25a-403, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

**R270-1-7. Abortion.**

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-325 shall be eligible for a reparation award as long as all the requirements of Section 63-25a-411 have been met.

**R270-1-8. Emergency Awards.**

Pursuant to Section 63-25a-422, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

**R270-1-9. Loss of Earnings.**

A. Pursuant to Subsection 63-25a-411(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. Reference should be made to Section R270-1-11 for guidelines on sick leave, annual leave or bereavement leave as a collateral source. The Crime Victim Reparations Board may review extenuating circumstances on loss of earnings claims.

**R270-1-10. Moving, Transportation Expenses.**

A. Pursuant to Subsection 63-25a-411(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

**R270-1-11. Collateral Source.**

A. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

B. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

**R270-1-12. Record Retention.**

A. Pursuant to Section 63-25a-401, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

**R270-1-13. Awards.**

A. Pursuant to Section 63-25a-421, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

**R270-1-14. Essential Personal Property.**

Pursuant to Subsection 63-25a-411(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim. The Reparation Officer may allow up to $1500 for replacement of such items as eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board shall review any exceptions over $1500.

**R270-1-15. Subrogation.**

Pursuant to Section 63-25a-419, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

**R270-1-16. Unjust Enrichment.**

A. Pursuant to Subsection 63-25a-410(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his

living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

**R270-1-17. Prescription or Over-the-Counter Medications.**

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

**R270-1-18. Peer Review Committee.**

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations Board by written internal policy and procedure.

**R270-1-19. Medical Awards.**

A. Pursuant to Subsection 63-25a-411(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4. After the effective date of this rule, in-patient hospital medical bills shall be reimbursed at a rate established between the CVR office and individual hospitals and shall be considered payment in full. A Memorandum of Agreement shall be signed and kept on file.

5. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

**R270-1-20. Misconduct.**

Pursuant to Subsections 63-25a-402(22) and 63-25a-412(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

**R270-1-21. Three Year Limitation.**

Pursuant to Subsections 63-25a-406(1)(c) and 63-25a-428(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Officers may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule.

**R270-1-22. Sexual Assault Forensic Examinations.**

A. Pursuant to Subsections 63-25a-402(19) and 63-25a-411(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office in the amount of $300.00 without photo documentation and up to $600.00 with a photo examination. The CVR office may also pay for the cost of medication and up to 85% of the hospital expenses. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

8. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

**R270-1-23. Loss of Support Awards.**

A. Pursuant to Subsection 63-25a-411(4)(g), loss of support awards shall be covered on death claims only.

**R270-1-24. Rent Awards.**

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded for actual rent expenses for up to three months, not to exceed a maximum rent award of $1800, if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

4. The victim submits a safety plan to CVR and the plan is approved by CVR.

5. The victim submits a self-sufficiency plan to CVR and the plan is approved by CVR.

6. The need for rent assistance is directly related to and caused by the crime upon which the claim is based.

B. No victim shall receive more than one rent award in their lifetime.

**R270-1-25. Secondary Victim.**

Secondary victims who are not primary victims pursuant to Subsections 63-25a-402(37) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVR Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) and anyone residing in the household at the time of the crime who was traumatically affected by the crime. The CVR Board may review requests by other individuals who are not immediate family members or do not reside in the household.

**R270-1-26. Victim Services.**

A. Pursuant to Subsection 63-25a-406(1)(j), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63-25a-406(1)(j), "sufficient reserve" means enough funds to sustain the operation of the Office of Crime Victim Reparations, including administrative costs and reparations payments, for one year.

C. The CVR Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVR Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVR Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVR Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVR Board.

F. The CVR Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVR Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVR Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVR Board shall not constitute a commitment for funding in future years. The CVR Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Office of Crime Victim Reparations on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVR Board.

**R270-1-27. Nontraditional Cultural Services.**

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

**KEY: victim compensation, victims of crimes**
**January 2, 2008 63-25a-401 et seq.**
**Notice of Continuation July 3, 2006**

**R277. Education, Administration.**
**R277-469. Instructional Materials Commission Operating Procedures.**
**R277-469-1. Definitions.**

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

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

D. "Commission" means the Instructional Materials Commission.

E. "Instructional materials" means systematically arranged text materials, in harmony with the Core framework and required courses of study or U-PASS requirements or both, which may be used by students or teachers or both as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use; and

(2) may be accompanied by or contain teaching guides and study helps; and

(3) shall be high quality, research-based and proven to be effective in supporting student learning.

F. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal. The USOE shall develop a Request for Proposal (RFP) to select one vendor to conduct the required alignments.

G. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

H. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

I. National Instructional Materials Accessibility Standard (NIMAS) is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

J. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

K. "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

L. "Primary instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

M. "Public website" means a website provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment mapping to the Core for Utah primary instructional materials.

N. "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

O. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

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

Q. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, as defined in Section 53A-1-602;

(3) a direct writing assessment in grades 6 and 9; and

(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611.

**R277-469-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

**R277-469-3. Use of State Funds for Instructional Materials.**

A. School districts may use funds:

(1) for primary instructional materials that have been mapped and aligned to the Core by an independent party; and

(2) for any supplemental or supportive instructional materials that support Core or U-PASS requirements.

(3) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

(1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

**R277-469-4. Instructional Materials Commission Members Terms of Service.**

A. Members shall be appointed from categories designated in Section 53A-14-101.

B. Members shall serve four year staggered terms with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

**R277-469-5. Commission Review of Materials.**

A. The primary focus of instructional materials review shall be materials used in subjects assessed under U-PASS to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

B. Subject areas and timelines for review shall be determined by the Commission based on school district needs and requests, and using forms and procedures provided by the USOE.

C. Commission review of material takes place at least annually.

**R277-469-6. Review and Adoption Categories.**

Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:

A. Recommended Primary: Instructional materials that:

(1) are in alignment with content, philosophy and instructional strategies of the Core;

(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107;

(3) are appropriate for use by students as principal sources of study;

(4) provide comprehensive coverage of course content; and

(5) support Core or U-PASS requirements or both.

B. Recommended Limited: Instructional materials that are in limited alignment with the Core or U-PASS requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.

D. Recommended Student Resource: Instructional materials aligned to the Core or that support U-PASS that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.

F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.

**R277-469-7. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.**

A. Instructional materials shall:

(1) be consistent with Core or U-PASS requirements or both;

(2) if used as primary materials, be mapped and aligned to the Core consistent with Section 53A-14-107;

(3) be high quality, research-based and proven to be effective in supporting student learning;

(4) provide an objective and balanced viewpoint on issues;

(5) include enrichment and extension possibilities;

(6) be appropriate to varying levels of learning;

(7) be accurate and factual;

(8) be arranged chronologically or systematically, or both;

(9) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;

(10) be free from sexual, ethnic, age, gender or disability bias and stereotyping; and

(11) be of acceptable technical quality.

B. Publishers, when submitting new primary material to be evaluated by the USOE, shall submit an electronic version in NIMAS file format of that material to the National Instructional Materials Access Center (NIMAC) for use in conversion into Braille, large print, and other formats for students with print disabilities.

C. USOE review:

(1) The USOE may require a school district to provide a report of instructional materials purchased by the school district or a school in the previous five years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

**R277-469-8. Agreements and Procedures for School Districts.**

A local board shall establish a policy for school district and school selection and purchase of instructional materials. The policy shall include:

A. assurances signed by the school district superintendent and school principal(s) that primary instructional materials have been aligned to the Core by an independent party and that the completed Core alignment mapping is available on a public website free of charge for teachers and the general public.

B. assurances signed by the school district superintendent and school principal(s) that instructional materials not recommended by the Commission have been selected consistent with state law. The assurances shall be available for review by the Board upon request.

C. Consistent with legislative direction, charter schools are exempt from using only instructional materials that have been reviewed consistent with this rule under Section 53A-1a-511(4)(g).

**R277-469-9. Agreements and Procedures for Publishing Companies.**

A. Publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party to evaluate and align the primary instructional material and related ancillary materials to the appropriate Utah Core for basic skills courses and in harmony with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment mapping on a public website at no charge; and

(b) the publisher provides a hyperlink from the public website to the Commission for the purpose of tying the independent alignment mapping to the evaluation conducted by the Commission on the RIMs website.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. The USOE shall select one independent entity through an RFP process requiring competitive sealed proposals consistent with the law.

C. Publishers seeking to sell recommended materials to Utah schools or school districts shall have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

D. Depository agreements may be made between publishers of materials and one or more depository.

E. The provisions of R277-469-9 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

F. Recommended materials with revisions:

(1) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access Center (NIMAC) if the USOE approves the substitution request.

(2) If Subsection R277-469-8E is not satisfied, a new edition shall be submitted for recommendation as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the state subject area specialist.

G. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

**R277-469-10. Request for Reconsideration of Recommendation.**

A. A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows:

(1) A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(2) A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next review cycle.

(3) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(8) A school district, school or publisher shall receive written notification that a recommendation is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are recommended.

**KEY: instructional materials**
**January 22, 2008 Art X, Sec 3**
**Notice of Continuation April 1, 2003 53A-14-101 through 53A-14-106**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-518. Applied Technology Education Licenses.**
**R277-518-1. Definitions.**

A. "Applied technology education (ATE)" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. The programs provide all students a continuous education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Occupational categories include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; technology and engineering education; and work-based learning, consistent with R277-916.

B. "ATE Alternative Preparation Program (APP) license area of concentration (license area)" means the provisional license area of concentration issued by the Board for a three year period which enables the holder to teach only in a specific ATE or technical field in the public school system and may require educational coursework.

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

D. "Level 1 license" means the initial provisional license issued by the Board to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program. A complete Utah educator license requires both a level and a specified license area.

E. "Level 2 license" means a license issued by the Board to a Level 1 license holder upon completion of the Entry Years Enhancement (EYE) Program consistent with R277-522. A complete Utah educator license requires both a level and a specified license area.

F. "Level 3 license" means a license issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice. A complete Utah educator license requires both a level and a specified license area.

G. "A license area of concentration (license area)" is obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

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

**R277-518-2. 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, Section 53A-6-104 which permits the Board to issue licenses for educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for an ATE license area and endorsements. An appropriate ATE or secondary license area and appropriate endorsement(s) are required for all persons teaching ATE programs at the secondary and adult level where high school credit is earned.

**R277-518-3. Applied Technology Education License Required.**

An ATE or secondary license area with appropriate endorsements is required for all persons teaching ATE programs at the secondary and adult level where high school credit is earned.

**R277-518-4. Level 1 ATE (APP) License.**

A. A Level 1 ATE (APP) license area may be issued to an applicant who:

(1) has six years of related occupational experience or documented evidence of a bachelor's degree in a related area and two years of full-time related work experience or documented evidence of an associate's degree in a related area and four years of full-time related work experience with an appropriate endorsement in any of the following program areas:

(a) agriculture;
(b) business;
(c) marketing;
(d) trade and technical;
(e) technology and engineering;
(f) family and consumer sciences;
(g) health science and technology;
(h) information technology; and
(i) work-based learning.

(2) has been offered a teaching assignment directly related to the applicant's occupational experience and which is in an approved area of endorsement.

B. A Level 1 ATE (APP) license area for the Disabled, which is restricted to teaching in workshop centers for the handicapped, may be issued to an applicant who has 18 months of related occupational experience in business or industry related to the teaching assignment offered the applicant.

C. Verification of related occupational experience shall accompany an application for a Level 1 ATE (APP) license area.

(1) Periods of employment lasting less than one month and periods of employment prior to 18 years of age are not accepted for purposes of calculating the occupational experience requirement.

(2) All work experience shall be within 10 years of application.

D. State-approved testing:

The occupational experience requirement may be waived by the appropriate USOE ATE Program Specialist if the applicant has passed a state-approved competency examination in the respective field at or above the USOE established cut-off scores. Individual applicant scores may be used for licensing purposes up to five years after completion of the respective examination(s).

E. Besides meeting the requirements of Subsection 4(A)(1), an applicant for a Level 1 ATE (APP) license area to instruct in:

(1) barbering, cosmetology, or building trades shall also hold a valid license in the respective area issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing;

(2) a nurse assistant course shall also be a licensed practical nurse or a registered nurse;

(3) a licensed practical nurse course shall also be a registered nurse;

(4) a health science medical anatomy and physiology course shall also have a minimum of an associate's degree in a health care related area.

F. An ATE (APP) license area applicant shall complete pedagogical coursework or satisfy pedagogical standards consistent with R277-503-4. A Level 1 ATE (APP) license area applicant shall provide evidence of mastery of the following areas:

(1) concepts, principles, and methods of teaching;
(2) human relations or educational psychology;
(3) curriculum development related to the program area;
(4) development and use of instructional materials and aids;
(5) facility management and safety;
(6) measurement and evaluation;

(7) Applied Technology Education Leadership Organizations (ATELO), equity education, work-based learning, and comprehensive guidance.

G. In addition to satisfaction of the pedagogical areas of R277-518-4F, an ATE (APP) license area applicant is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that demonstrates mastery of beginning teaching skills and competency.

H. A person shall be employed under an ATE (APP) license area for one three year period. It is expected that an ATE (APP) license area holder shall complete requirements for a Level 1 ATE license area within three years or satisfy the employing district's/charter school's requirement for a district-specific license under Section 53A-6-104.5 in subsequent years.

I. A person teaching an ATE program up to one-half day in relation to the respective school schedule, whose regular employment is or has been in any ATE program area, may, in lieu of the requirements of R277-518-4(F), have the Level 1 ATE (APP) license area renewed for subsequent three-year periods upon the recommendation of the employing agency and with the approval of the appropriate USOE ATE Program Specialist.

J. Secondary License: A Level 1 ATE (APP) license area holder with a bachelor's degree may obtain a Level 2 ATE license area and secondary license area by successfully completing the following requirements within a three-year period:

(1) if the applicant's bachelor's degree is not related to the subject area he would like to teach, he shall document at least six years of work experience in the desired teaching area;

(2) has satisfied the requirements of R277-518-4F;

(3) is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that demonstrates mastery of beginning teaching skills and competency

(4) provide documentation of any additional content area coursework as advised by the appropriate USOE ATE Program Specialist; and

(5) have completed the Entry Years Enhancement (EYE) Program consistent with R277-522.

**R277-518-5. Level 1 ATE License.**

An applicant for a Level 1 ATE license area with endorsement(s) shall have:

A. a baccalaureate degree in an approved teacher educational program, including 16 semester hours of course work in the endorsement area in which the applicant desires to teach, and at least two years of successful related occupational experience; or,

B. a baccalaureate degree with a major in the related occupational field in which the applicant desires to teach, including satisfaction of 15 semester hours or competency in USOE-approved education course work and two years of related occupational experience.

C. An applicant without public school teaching experience is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that enhances or demonstrates mastery of beginning teaching skills and competencies.

**R277-518-6. Level 2 ATE License.**

An applicant for the Level 2 ATE license area with endorsements shall have:

A. completed at least three years of successful teaching experience under a Level 1 ATE (APP) license area or Level 1 ATE license area; and

B. completed the Entry Years Enhancement (EYE) Program consistent with R277-522.

**R277-518-7. Level 3 ATE License.**

A. An applicant for the Level 3 ATE license area with endorsements shall have a Level 2 ATE license area and have achieved National Board Professional Teaching Standards Certification or hold a doctorate in the educator's field of practice.

B. The Level 3 ATE license area shall be renewed for successive seven year periods consistent with R277-501, Educator Licensing Renewal.

**KEY: educator licensing, professional education, applied technology education**

**May 5, 2004** **Art X Sec 3**
**Notice of Continuation January 8, 2008** **53A-6-104**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-600. Student Transportation Standards and Procedures.**
**R277-600-1. Definitions.**

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

B. "Density" means the number of eligible students divided by the approved total bus route miles plus half of the deadhead miles.

C. "Adjusted/approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, required deadhead miles, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a prorated portion of the bus purchase prices less salvage value.

D. "Bus route miles" means operating a bus with passengers.

E. "Deadhead" means operating a bus when no passengers are on board.

F. "Office" means the Utah State Office of Education.

G. "ADA" means average daily attendance.

H. "ADM" means average daily membership.

I. "Hazardous" means danger or potential danger which may result in injury or death.

J. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.

K. "Out-of-pocket expense" means gasoline, oil, and tire expenses.

L. "IEP (individualized education program)" means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347. The IEP serves as a communication vehicle between parents and school personnel and enables them as equal participants to decide jointly what the student's needs are, what services shall be provided to meet those needs, what the anticipated outcomes may be, and how the student's progress toward meeting the projected outcomes shall be evaluated.

**R277-600-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)(e) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and standards for eligibility.

B. The purpose of this rule is to specify the standards under which districts may qualify for state transportation funds.

**R277-600-3. General Provisions.**

A. State transportation funds are used to reimburse districts for the direct costs of transporting students to and from school. The Board defines the limits of district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the district, and appropriated by the state, are termed A category costs. Other methods of transporting students to school are termed B category costs. The Board devises and distributes a formula to determine the reimbursement rate for A category costs. The formula factors are density and adjusted/approved costs. B category costs are approved on a line-by-line basis by the Office after comparing the costs submitted by a district with the costs of alternative methods of performing the function.

C. The Office shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The Office shall also develop uniform forms for the administration of the program.

D. All student transportation costs are recorded. Accurate mileage records are kept by program. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

**R277-600-4. Eligibility.**

A. State transportation funds shall be used only for transporting eligible students.

B. Eligibility for elementary students and secondary students, including seventh and eighth grade students, is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended upon assignment of the local board.

C. A student who falls under the school finance law definition of student with disabilities, regardless of distance from the school attended upon assignment of the local board, is eligible, if transportation is identified as a needed service in the IEP.

D. Students who attend school for at least one-half day at an alternate location are expected to walk distances up to 1 and one half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

**R277-600-5. Student with Disabilities Transportation.**

A. Students with disabilities are transported on regular buses and regular routes whenever possible. Districts may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

B. Districts may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

C. Transportation is provided by the Utah Schools for the Deaf and the Blind for students who are transported to its extension classes. Exceptions may be approved by the Office.

**R277-600-6. Requirements for Bus Route Approval.**

A. Transportation is over routes proposed by local boards and approved by the Office. Information requested by the Office must be provided prior to approval of a route. A route usually is not approved for reimbursement if an equitable student transportation allowance or a subsistence allowance accomplishes the needed transportation at less cost. A route must:

(1) traverse the most direct public route;

(2) be reasonably cost effective related to other feasible alternatives;

(3) provide adequate safety;

(4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(5) include an economically adequate number of students.

B. The minimum number of general education students

required to establish a route is ten; the minimum number of students with disabilities is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The local district designates safe areas for bus stops. To promote efficiency, the minimum distance between bus stops is 3/10 of a mile. Bus routes shall avoid, whenever possible, bus stops on dead-end roads. A student is expected to walk to bus stops up to one and one-half miles from home depending on the age and ability of the student. Special education students are expected to walk to bus stops commensurate with their ability.

D. Changes in existing routes or the addition of new routes must be reported to the Office as they occur for approval.

E. Early home routes do not qualify for state reimbursement unless approved by the Office prior to initiation.

F. Transporting eligible students home after school activities held at the student's school of regular attendance and within a reasonable time period after the close of the regular school day is approved route mileage.

G. A route may be approved as an alternative to building construction upon special permission of the Office if the route is needed to allow more efficient district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across district boundaries.

**R277-600-7. Approved Deadhead Mileage.**

Deadhead mileage included in adjusted/approved costs is calculated as follows:

A. Deadhead mileage to and from school: mileage from the garage or bus storage area to the first pickup point, mileage between schools for other bus runs, and mileage from the last run in the morning and evening from the last stop to the garage or storage area.

B. Other deadhead mileage: mileage due to bus driver training and driving to service or repair sites.

**R277-600-8. Alternative Transportation.**

Bus routes that involve a large number of deadhead miles are analyzed for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a district M.P.V. is not an adjusted/approved expense.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation is an adjusted/approved expense. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, nearest the student's home and for reasonable and necessary out-of-pocket costs associated with student transportation. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations. The trip mileage is paid for by car, one per family;

(2) a student allowance is made to the student and not to the parent for transporting one's own child or other students. This does not restrict parents from pooling resources, but it does restrict payments in excess of out-of-pocket costs;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance is paid to the school district to help pay the costs of district transportation;

(4) the student's mileage shall be measured and certified in district records. The student's ADA as entered in school records is used to determine the student's attendance.

C(1) the cost incurred in providing a subsistence allowance is an adjusted/approved expense. A parent is reimbursed for a student's room and board when a student lives at a site nearer to the assigned school, if the student does not have a school facility or bus service available within approximately 60 miles of the student's residence. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of two round trips per year. The costs are calculated on the basis of actual mileage traversed from home to school at the rate prescribed in R277-600-8B(1);

(2) a subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the purpose of closer location to a school. The parent's residence during the school year is the residence of the child;

D. The cost incurred in engaging in a contract or leasing for transportation is an adjusted/approved expense. The amount reimbursed to districts using commercial contracts is determined in accordance with transportation costs per pupil in comparable districts. Reimbursements for districts using a leasing arrangement are determined in accordance with the comparable cost for the district to operate its own transportation. Under a contract or lease, the school district's transportation administrator's time shall not exceed 1% of the commercial contract cost. Eligible student counts, bus route mileage, and bus inventory data are required as if the district operated its own transportation.

**R277-600-9. Other Reimbursable Expenses.**

State transportation funds may be used to reimburse a district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program.

(1) a full time supervisor may be paid at the same rate as other professional directors in the district. The supervisor's salary must be commensurable with the number of buses, number of eligible students transported, and total responsibility relative to other supervisory functions. A district may claim a percentage of the district superintendent's or clerk's salary for reimbursement if the district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is kept;

(2) The wage time for bus drivers includes:

(a) to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling;

(b) field trip time: set at a minimum of two hours driving time;

(c) activity trip time: wage time allowed under R277-600-9A(2)(a) plus a reduced amount for layover time.

B. Transportation employee benefits. Only a proportionate amount is allowed for health, accident, and life insurance.

C. Purchased property services;

D. Property, comprehensive, and liability insurance.

E. Communication expenses and travel for supervisors to workshops or the national convention.

F. Supplies and materials for vehicles, the transportation office and the garage.

G. Depreciation: The Office computes a formula annually to calculate depreciation.

H. Training expenses: The following maximum amounts are reimbursable for the driver's training stipend for each type of training a bus driver successfully completes:

(1) basic course, 24 hours: $135;

(2) in-service, 8 hours: $50;

(3) defensive driving, 8 hours: $50;

(4) first aid and emergency care, 8 hours: $50.

I. Other related costs approved by the Office.

**R277-600-10. Non-reimbursable Expenses.**

A. Expenditures for uses of school district buses and equipment which are not adjusted/approved costs must be deleted when adjusted/approved transportation costs are calculated. Bus and equipment costs must be reduced on a pro rata basis for the miles not connected with adjusted/approved costs.

B. Expenses determined by the Office to be not directly related to transportation of eligible students to and from school are not reimbursable.

**R277-600-11. Special Transportation Levy.**

A. Costs for district transportation of students which are not reimbursable may be paid for from general funds of the district or from the proceeds of a tax rate authorized for districts. The tax rate authorized for transportation may not exceed .0003 tax rate. The revenue may be used:

(1) to transport ineligible students to and from school;

(2) for transportation to interscholastic activities;

(3) for transportation to night activities; and

(4) for field trip admissions.

B. Transportation of students in areas where walking constitutes a hazardous condition, as determined by the local board, may be provided by the Board from general funds from the district or from the tax specified in Subsection 11(A). An area is determined to be hazardous on the basis of an analysis of the following factors:

(1) volume, type, and speed of vehicular traffic;

(2) age and condition of students traversing the area;

(3) condition of the roadway, sidewalks and applicable means of access in the area; and

(4) environmental conditions.

C(1) The cost of school bus operation for activity trips, field trips, and for the transportation of students to alleviate hazardous walking conditions may be met with state funds appropriated under Section 53A-17a-127(7) only to the extent of funds available to individual school districts for the specific purposes of Section 53A-17a-127(6)(b).

(2) Appropriated funds under Section 53A-17a-127(7) shall be distributed according to each district's proportional share of its qualifying state contribution as defined under Section R277-600-11B(3) for activity, field trip, and hazardous route mileage.

(3) The qualifying state contribution for districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per district by a transportation levy of .0002.

**R277-600-12. Exceptions.**

A. When undue hardships and inequities are created through exact application of these standards, districts may make a request for an exception to these rules on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation restrictions.

B(1) a district shall not be penalized in the computation of its state allocation for the presence on a to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occur:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one;

(e) additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

**KEY: school buses, school transportation**
**September 15, 1999 Art X Sec 3**
**Notice of Continuation January 8, 2008 53A-1-402(1)(e)**
**53A-17a-126 and 127**

**R277. Education, Administration.**
**R277-605. Coaching Standards and Athletic Clinics.**
**R277-605-1. Definitions.**

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

B. "Utah High School Activities Association (UHSAA)" is an organization whose purpose is to administer and supervise interscholastic activities among its member schools according to the Association constitution and by-laws.

**R277-605-2. 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, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs.

B. The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.

**R277-605-3. Athletics and the Core Curriculum.**

A. Schools and coaches shall strictly adhere to both the letter and the spirit of the UHSAA by-laws, policies, regulations, and interpretations for high school sports programs.

B. Schools are prohibited from scheduling full-year physical education or athletic fitness and movement classes for specific school teams. In schools where in-season fitness and movement classes are scheduled, the classes shall not be used to violate the starting and stopping dates for practice and competitive play as prescribed by the UHSAA.

C. High school competitive sports programs shall be supplementary to the high school curriculum.

**R277-605-4. Coaches and School Activity Leaders as Supervisors and Role Models.**

A. Coaches and other designated school leaders shall diligently supervise their players at all times while on school-sponsored activities. This includes supervision on the field, court, or other competition or performance sites, in locker rooms, in seating areas, in eating establishments, in lodging facilities, and while traveling.

B. A coach or other designated school leader shall be an exemplary role model and shall not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.

C. Coaches, assistants and advisors shall act in a manner consistent with Section 53A-11-908 and shall not use foul, abusive, or profane language while engaged in school related activities; nor permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

D. All coaches shall be appropriately certified as provided in R277-517.

**R277-605-5. Athletic and Activity Clinics.**

A. School personnel, activity leaders, coaches, advisors, and other personnel shall not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.

B. Required or voluntary participation in summer or other off-season clinics, workshops, and leagues shall not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.

C. A summer workshop or clinic conducted by a school for any sport or activity shall be scheduled and held consistent with UHSAA bylaws and policies. These bylaws are available in every secondary school principal's office, at school district offices, at the Utah State Office of Education, and from the UHSAA for a minimal cost.

**KEY: extracurricular activities**

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| **March 5, 2002** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-401(3)** |
| | **53A-1-402(1)(b)** |

**R277. Education, Administration.**
**R277-610. Released-Time Classes for Religious Instruction.**
**R277-610-1. Definitions.**

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

B. "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school, at the request of the student's parent, to attend classes in religious instruction given by a regularly organized church.

**R277-610-2. 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, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for public schools regarding released-time religious classes.

**R277-610-3. Standards and Procedures.**

A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

B. Students shall attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.

C. A student shall not be excused from school, even upon the written request of a parent or guardian, at a time when that student should be in attendance at a regular class of the school for which credit is normally required for graduation or to complete the required course of study.

D. A school shall not keep records of attendance for released-time classes or use school personnel or any part of the school organization to regulate such attendance.

E. Records of attendance at released-time classes, grades, marks, or other data shall not be included in the reports made by the school to parents.

F. Teachers of released-time classes are not to be considered members of the school faculty or to participate as faculty members in any school function.

G. Schedules of classes for public schools shall not include released-time classes. At the convenience of the school, registration forms may contain a space indicating "released-time" designation. Scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off the premises of the public school.

H. Public school publications shall not include pictures, reports, or records of functions of released-time classes.

I. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.

J. Public school equipment or personnel shall not be used in any manner to assist in the conduct of released-time classes. No connection of bells, telephones, or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own program. When any connection of devices is permitted, the pro rata costs shall be borne by the respective institutions.

K. Institutions offering religious instruction shall be regarded as private schools completely separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are considered an appropriate relationship with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

**KEY: religious education**

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| **1987** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-402(1)** |
| | **53A-1-401(3)** |

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

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

B. "Applied courses" means public school courses or classes that apply the concepts of Core subjects. Courses may be offered through Career and Technical Education or other areas of the curriculum.

C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.

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

E. "Career and Technical Education (CTE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

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

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

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

I. "Core subjects" means courses for which there is a declared set of Core curriculum objectives as approved by the Board.

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

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

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

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

N. "Life Skills document" means a companion document to the Core curriculum that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

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

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

Q. "SEOP" means student education occupation plan. An SEOP shall include:

(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(2) all Board and local board graduation requirements;

(3) evidence of parent, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies; and

(5) identification of post secondary goals and approved sequence of courses.

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

S. "Supplemental courses" means public school courses that provide students with the skills to succeed in Core subject areas.

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

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

**R277-700-2. Authority and Purpose.**

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

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

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

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

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

C. The descriptions shall contain mastery criteria for the courses, shall stress mastery of the course material and Core objectives, standards and life skills consistent with the Core Curriculum and Life Skills document. Mastery shall be stressed rather than completion of predetermined time allotments for courses.

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

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

**R277-700-4. Elementary Education Requirements.**

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

B. Elementary School Education Core Curriculum Content Area Requirements:

(1) Grades K-2:

(a) Reading/Language Arts;

(b) Mathematics;

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

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

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

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

F. Board-approved CRT's shall be used to assess student mastery of the following:
(1) reading;
(2) language arts;
(3) mathematics;
(4) science in elementary grades 4-6; and
(5) effectiveness of written expression in grade 6.

G. Norm-referenced tests shall be given to all elementary students in grades 3 and 5.

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

**R277-700-5. Middle School Education Requirements.**

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

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

C. Local boards may require additional units of credit.

D. Grades 7-8 Core Curriculum Requirements and units of credit:
(1) General Core (10.5 units of credit):
(a) Language Arts (2.0 units of credit);
(b) Mathematics (2.0 units of credit);
(c) Science (1.5 units of credit);
(d) Social Studies (1.5 units of credit);
(e) The Arts (1.0 units of credit):
(i) Visual Arts;
(ii) Music;
(iii) Dance;
(iv) Theatre.
(f) Physical Education (1.0 units of credit);
(g) Health Education (0.5 units of credit);
(h) Career and Technical Education, Life, and Careers (1.0 units of credit);
(i) Educational Technology (credit optional);
(j) Library Media (integrated into subject areas).

E. Board-approved CRT's shall be used to assess student mastery of the following:
(1) reading;
(2) language arts;
(3) mathematics; and
(4) science in grades 7 and 8.

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

**R277-700-6. High School Requirements (Effective for Students Graduating Through the 2009-2010 School Year).**

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

B. Students in grades 9-12 shall earn a minimum of 15 Board-specified units of credit through course completion or through competency assessment consistent with R277-705.

C. Grades 9-12 Core Curriculum as specified:
(1) Language Arts (3.0 units of credit);
(2) Mathematics (2.0 units of credit):
(a) minimally, Elementary Algebra or Applied Mathematics I; and
(b) Geometry or Applied Mathematics II; or
(c) any Advanced Mathematics courses in sequence beyond (a) and (b);
(d) high school mathematics credit may not be earned for courses in sequence below (a).
(3) Science (2.0 units of credit from two of the four science areas):
(a) Earth Systems Science (1.0 units of credit);
(b) Biological Science (1.0 units of credit);
(c) Chemistry (1.0 units of credit);
(d) Physics (1.0 units of credit).
(4) Social Studies (2.5 units of credit):
(a) Geography for Life (0.5 units of credit);
(b) World Civilizations (0.5 units of credit);
(c) U.S. History (1.0 units of credit);
(d) U.S. Government and Citizenship (0.5 units of credit).
(5) The Arts (1.5 units of credit from any of the following performance areas):
(a) Visual Arts;
(b) Music;
(c) Dance;
(d) Theatre;
(6) Physical and Health Education (2.0 units of credit):
(a) Health (0.5 units of credit);
(b) Participation Skills (0.5 units of credit);
(c) Fitness for Life (0.5 units of credit);
(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).
(7) Career and Technical Education (1.0 units of credit);
(a) Agriculture;
(b) Business;
(c) Family and Consumer Sciences;
(d) Health Science and Technology;
(e) Information Technology;
(f) Marketing;
(g) Technology and Engineering Education;
(h) Trade and Technical Education.
(8) Educational Technology:
(a) Computer Technology (0.5 units of credit for the class by this specific name only); or
(b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the school or school district).
(9) General Financial Literacy (0.5 units of credit).
(10) Library Media Skills (integrated into the subject areas).
(11) Board-approved CRT's shall be used to assess student mastery of the following subjects:
(a) reading;
(b) language arts through grade 11;
(c) mathematics as defined under R277-700-6D(2);
(d) science as defined under R277-700-6D(3); and
(e) effectiveness of written expression in grade 9.

D. Local boards shall require students to earn a minimum of 24 units of credit in grades 9-12 for high school graduation.
(1) If a local board requires students to register for more than 24 units in grades 9-12, one-third of those credits above 24 shall be in one or more of the academic areas of math, language

arts, world languages, science, or social studies, as determined by the local board.

(2) Local boards may require students to earn credits for graduation that exceed minimum Board requirements.

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

**R277-700-7. High School Requirements (Effective for Graduating Students Beginning with the 2010-2011 School Year).**

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

B. Beginning with the graduating class of 2011, students in grades 9-12 shall earn a minimum of 18 Board-specified units of credit through course completion or through competency assessment consistent with R277-705.

C. Grades 9-12 Core Curriculum, as specified:

(1) Language Arts (4.0 units of credit):

(a) Ninth grade level (1.0 unit of credit);

(b) Tenth grade level (1.0 unit of credit);

(c) Eleventh grade level (1.0 unit of credit); and

(d) Applied or advanced language arts credit (1.0 unit of credit) from the list of courses, determined by the local board and approved by USOE, using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts; and

(iii) courses apply the fundamental concepts and skills of language arts; and

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation;

(2) Mathematics (3.0 units of credit) met minimally through successful completion of three units of credit of mathematics including Elementary Algebra or Applied Mathematics I and Geometry or Applied Mathematics II; and mathematics in grades 9-12 selected from the Core courses or applied or supplemental courses from the list of courses determined by the local board and approved by USOE using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of mathematics; and

(iii) courses apply the fundamental concepts and skills of mathematics; and

(iv) courses provide developmentally appropriate content; and

(v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(3) Science (3.0 units of credit):

(a) at a minimum, two courses from the four science foundation areas:

(i) Earth Systems Science (1.0 units of credit);

(ii) Biological Science (1.0 units of credit);

(iii) Chemistry (1.0 units of credit);

(iv) Physics (1.0 units of credit); and

(b) one additional unit of credit from the foundation courses or the applied or advanced science list determined by the local board and approved by USOE using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science; and

(iii) courses apply the fundamental concepts and skills of science; and

(iv) courses provide developmentally appropriate content; and

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(4) Social Studies (2.5 units of credit):

(a) Geography for Life (0.5 units of credit);

(b) World Civilizations (0.5 units of credit);

(c) U.S. History (1.0 units of credit);

(d) U.S. Government and Citizenship (0.5 units of credit).

(5) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance;

(d) Theatre;

(6) Physical and Health Education (2.0 units of credit):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).

(7) Career and Technical Education (1.0 units of credit):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education;

(h) Trade and Technical Education.

(8) Educational Technology (0.5 units of credit):

(a) Computer Technology (0.5 units of credit for the class by this specific name only); or

(b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the school or school district).

(9) General Financial Literacy (0.5 units of credit).

(10) Library Media Skills (integrated into the subject areas).

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

(1) reading;

(2) language arts through grade 11;

(3) mathematics as defined under R277-700-6D(2);

(4) science as defined under R277-700-6D(3); and

(5) effectiveness of written expression in grade 9.

E. Local boards shall require students to earn a minimum of 24 units of credit in grades 9-12 for high school graduation.

F. Local boards may require students to earn credits for graduation that exceed minimum Board requirements.

G. Elective courses offerings may be established and offered at the discretion of the local board.

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

accommodate a student with disabilities.

I. The Board and USOE may review local boards' lists of approved courses for compliance with this rule.

J. Graduation requirements may be modified for individual students to achieve an appropriate route to student success when such modifications:

(1) are consistent with the student's IEP or SEOP or both;

(2) are maintained in the student's file and include the parent's/guardian's signature; and

(3) maintain the integrity and rigor expected for high school graduation, as determined by the Board.

**R277-700-8. Student Mastery and Assessment of Core Curriculum Standards and Objectives.**

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

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

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

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

E. Students with Disabilities:

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

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

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

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

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

I. School and school districts are ultimately responsible for and shall submit all required student assessments irrespective of allegations of intentional or unintentional violations of testing security or protocol.

**KEY: curricula**
**October 24, 2006** **Art X Sec 3**
**Notice of Continuation January 8, 2008** **53A-1-402(1)(b)**
**53A-1-402.6**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-702. Procedures for the Utah General Educational Development Certificate.**
**R277-702-1. Definitions.**

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

B. "GED Test" means the General Educational Development Test developed by the American Council on Education.

C. "Utah General Educational Development Certificate" means a certificate issued by the Board acknowledging competency on the part of the certificate holder in the GED test areas.

**R277-702-2. 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, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, 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 describe the standards and procedures for obtaining a Utah General Educational Development Certificate.

**R277-702-3. Eligibility for GED Testing.**

A. Admission to a GED Test requires the following:

(1) that the applicant be at least 18 years of age and the applicant's graduating class has graduated; or

(2) that if the applicant is 17 or 18 years of age and the applicant's graduating class has not graduated, the GED testing center requires the following:

(a) a letter from the school district within which the applicant resides indicating the applicant is not regularly enrolled in school; and

(b) a letter from the applicant's parent or guardian authorizing the test or a marriage certificate from the applicant if the applicant is married.

**R277-702-4. Administrative Procedures and Standards for Testing and Certification.**

A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED testing program in the state. The Board may contract with educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers shall meet the GED Testing Service requirements in the GED Examiner's Manual.

B. Persons desiring to take a GED Test shall complete an application available from any official GED testing center of the Board and be eligible to take the GED Test under Subsection 3.

C. Persons desiring to obtain a Utah General Educational Development Certificate shall obtain a standard score of at least 410 on each of the five test components of the GED Test and obtain an overall average standard score of 450 on the five tests combined.

**R277-702-5. Fee.**

A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program.

B. A GED testing center, after consultation with the Board or its designee, shall adopt fees and forms for its GED testing.

**R277-702-6. Official Transcripts.**

Test scores shall be accepted by the Board when original scores are reported by:

A. Board-approved GED testing centers;

B. Transcript service of the Defense Activity for Non-Traditional Educational Support (DANTES);

C. Veterans Administration hospitals and centers; or

D. GED Testing Service.

**R277-702-7. Adult High School Credit.**

A local board of education may adopt standards and procedures for awarding up to five (5) units of credit on the basis of test results which may be applied toward an adult high school diploma only.

**R277-702-8. GED Testing Security.**

A. Access to GED tests shall be limited to the State Administrator of GED Testing; state authorized GED Examiners; and during actual testing, those examinees without high school diplomas or GED. Any other access to GED tests must be cleared in writing through the State Administrator of GED Testing.

B. All test administrators shall conduct GED test administration in strict accordance with the procedures and guidelines specified in the GED test administration manual, school district rules and policies, and Board rules.

C. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item from any official GED test;

(2) allow students access to any testing material, in any form, prior to test administration with the exception of GED demographic sheets; and

(3) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of GED test scores of any individual student or group taking the GED test.

D. Violation of any of these rules may subject licensed educators to possible disciplinary action under Section 53A-8-104 or Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I), or both.

**KEY: adult education, educational testing, student competency**
**May 17, 2002 53A-1-402(1)(b)**
**Notice of Continuation January 8, 2008 53A-1-401(3)**

**R277. Education, Administration.**
**R277-709. Education Programs Serving Youth in Custody.**
**R277-709-1. Definitions.**

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

B. "Custody" means the status of being legally subject to the control of another person or a public agency.

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

D. "Youth in Custody" means a person defined under Section 53A-1-403(1) who does not have a high school diploma or a GED certificate.

**R277-709-2. 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, Section 53A-1-403(1) which makes the Board directly responsible for the education of youth in custody, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in custody programs.

**R277-709-3. Student Evaluation, Education Plans, and School District Programs.**

A. Each student meeting the definition of youth in custody shall be evaluated at least every three years to determine the level and scope of the student's educational performance and the student's learning abilities. The evaluation shall include vision and auditory tests and shall specify known in-school and extra-school factors which may affect the student's school performance. The program receiving the student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation as quickly as possible so that unnecessary delay in developing a student's education program is avoided.

B. Based upon the results of the student evaluation, an appropriate student education plan shall be prepared for each youth in custody. The plan shall be reviewed and updated at least once each year or immediately following transfer of a student from one program to another, whichever is sooner. The plan is developed in cooperation with appropriate representatives of other service agencies working with a student. The plan shall specify the responsibilities of each of the agencies towards the student and is signed by each agency's representative.

C. School district Youth in Custody Programs

(1) The school district shall provide an education program for the student which conforms as closely as possible to the student's education plan. Educational services shall be provided in the least restrictive environment appropriate for the student's behavior and educational performance. Youth in custody who do not require special services or supervision beyond that which would be available to them were they not in custody shall be considered part of the district's regular enrollment and treated accordingly.

(2) Youth in custody shall not be assigned to, or remain in, restrictive or non-mainstream programs simply because of their custodial status, their past behavior, or the inappropriate behavior of other students.

(3) Education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program. Compliance shall be monitored by the Utah State Office of Education in periodic review visits.

(4) Credit earned in youth in custody programs that are accredited shall be accepted at face value in Utah's public schools.

(5) Educational services shall be sufficiently coordinated with non-custody programs to enable youth in custody to continue their education with minimal disruption following discharge from custody.

D. Youth in custody shall be admitted to classes within five school days following arrival at a new residential placement. If evaluation and student education plan development are delayed beyond that period, the student shall be enrolled temporarily based upon the best information available. The temporary schedule may be modified to meet the student's needs after the evaluation and planning process has been completed.

E. When a student is released from custody or transferred to a new program, the sending program shall bring all available school records up to date and forward them to the receiving program within one week following notification of release or transfer.

**R277-709-4. Operation Procedures.**

A(1) the Board shall contract with school districts to provide educational services for youth in custody. The respective responsibilities of the Board, the school district, and other local service providers for education shall be established in the contract. A school district may subcontract with local non-district educational service providers for the provision of educational services;

(2) the Board may contract with entities other than school districts only if the Board determines that the school district is unable to provided adequate education services.

B. Youth in custody receiving education services by or through a school district are students of that district.

C. State funds appropriated for youth in custody are allocated on the basis of annual applications made by school districts.

D. The share of funds distributed to a district is based upon criteria which include the number of youth in custody served in the district, the type of program required for the youth, the setting for providing services, and the length of the program.

E. Funds approved for youth in custody projects may be expended solely for the purposes described in the respective funding application. Unexpended funds may not be carried over from one fiscal year to the next, except following specific approval of the Board or a designee.

F. The USOE may retain no more than five percent of the annual youth in custody appropriation for program administration. No more than one percent of the appropriation may be directed to the following specific purposes and services:

(1) educator professional development;

(2) electronic educational services specific to a student's or school's needs;

(3) youth in custody data collection at the school district and state level;

(4) site visits to youth in custody schools by youth in custody personnel; and

(5) program evaluation at the state level.

G. Four percent of administrative funds may be withheld by the USOE to be directed to students attending youth in custody programs for short periods of time or to new or beginning youth in custody programs.

H. Federal funds are available under the Elementary and Secondary Education Act, 34 C.F.R., Chapter II, Part 200, Title I, Subpart D, for the education of youth who are neglected, delinquent, or at risk of dropping out.

I. The youth in custody program is separate from and not conducted under the state's education program for students with disabilities. Custodial status alone does not qualify a student as a student with a disability under laws regulating education for students with disabilities.

J. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for the youth in custody program.

K. Education staff assigned to youth in custody shall be

qualified and appropriate for their assignments. The teaching license and endorsement held by a teacher shall be important in evaluating the appropriateness of a teacher's assignment but not controlling. Elementary teachers may teach secondary-age students who are functioning at an elementary level in the subjects in question. Teachers shall not be required to hold special education licenses, although such licenses are encouraged.

**R277-709-5. Confidentiality.**

A. Transcripts and diplomas prepared for youth in custody shall be issued in the name of an existing district or school which also serves non-custodial youth and shall not bear references to custodial status.

B. School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records, but are nonetheless student records if retained by the school/district.

C. Members of the interagency team which design and oversee student education plans shall have access, through team member representatives of the participating agencies, to relevant records of the various agencies. The records and information obtained from the records remain the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency.

D. All information maintained in permanent form on a student from whatever source derived or received, is a student record under the Family Educational Rights and Privacy Act, 34 C.F.R., Part 99.

**R277-709-6. Coordinating Council.**

A. The Department of Human Services and the Board shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Youth Corrections and the Division of Child and Family Services. The Council shall operate under the guidelines developed and approved by the Department of Human Services and the Board.

B. Council membership shall include a representative of the following:

(1) Office of Licensing under Department of Human Services;

(2) State Division of Youth Corrections;

(3) multipurpose facilities under Division of Youth Corrections;

(4) urban detention facilities under Division of Youth Corrections;

(5) observation/diagnostic facilities under Division of Youth Corrections;

(6) long term secure facilities under Division of Youth Corrections;

(7) case management under Division of Youth Corrections;

(8) State Division of Child and Family Services;

(9) Regional Division of Child and Family Services;

(10) Utah State Office of Education.

(11) Utah school districts Youth in Custody directors;

(12) district juvenile courts;

(13) community-based private providers;

(14) foster parents;

(15) a Native American tribe.

**R277-709-7. Advisory Councils.**

A. Each school district serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs. Members of the council shall include, if applicable to the district, the following:

(1) a representative of the Division of Child and Family Services;

(2) a representative of the Division of Youth Corrections;

(3) directors of agencies located in a district such as detention centers, secure lockup facilities and observation and assessment units;

(4) a representative of community-based alternative programs for custodial juveniles such as Heritage Group Home and Odyssey House; and

(5) a representative of the school district.

B. The council shall adopt by-laws for its operation.

C. Local interagency advisory councils shall meet at least quarterly.

**KEY: students, education, juvenile courts**
**May 16, 2006** **Art X Sec 3**
**Notice of Continuation January 8, 2008** **53A-1-403(1)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-718. Utah Career Teaching Scholarship Program.**
**R277-718-1. Definitions.**

A. "Premier Scholarship" means a scholarship which includes $3,000, $1,000 per quarter for three quarters, in addition to tuition and fees.

B. "Certification requirements" means essential conditions which qualify an individual for a Utah teaching credential.

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

**R277-718-2. 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, Sections 53B-10-101 which permits the Board and State Board of Regents to establish criteria, policies, and procedures for administration of the Utah Career Teaching Scholarship and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for administration of the scholarship program.

**R277-718-3. Scholarships.**

A. The State Superintendent of Public Instruction awards the number of scholarships available for allocation to graduating high school seniors. Alternate recipients are designated in the event that a primary recipient declines the scholarship before the next academic year begins at the college or university.

B. Scholarships awarded to graduating high school seniors are for a period of years corresponding to the length of the course the student elects to pursue, up to a maximum of 12 semesters. Except for Premier Scholarships, the scholarship is equal to tuition and fees of the institution.

C. Scholarship recipients must meet institutional requirements for admission and must declare their intention to complete the prescribed work of normal instruction for a degree, diploma, and teaching certificate. After completion of such work, they must teach in the schools of this state for a period of years equal to that for which the scholarship was received.

D. Scholarship recipients are required to either teach in Utah schools within two years after graduation and certification or to repay the amount of scholarship assistance received. Credit for teaching is counted on a year for year basis in satisfying this repayment obligation: one year teaching equals forgiveness of one year of scholarship assistance. Recipients who teach in small schools in remote areas of the state as designated by the State Board of Regents shall receive two years of repayment credit for each year of teaching.

E. Recipients who fail to complete Utah teacher certification requirements are required to repay all scholarship assistance received with interest, consistent with "Utah State Board of Regents Policies and Procedures," March 14, 1986, published by the Utah State Board of Regents. This publication is available from the Utah State Board of Regents Office and the Certification Section and School Law Section at the Utah State Office of Education.

**R277-718-4. Award Procedures.**

A. The total number of scholarships authorized by the State Legislature to be maintained in any given year is 365. The number of scholarships available for award to graduating seniors is provided by the Office of the State Board of Regents. The number is in the ratio of 200 to 165.

B. By January 31st of each year, the State Superintendent of Public Instruction announces the availability of Utah Career Teaching Scholarships to be awarded to qualified candidates who will be graduating from Utah high schools in the spring of that same year. The announcement and official application forms are sent to all school district superintendents and high school principals or counselors, or both. A news release regarding the scholarships is sent to daily and weekly newspapers and other news media.

C. The Utah State Office of Education surveys Utah school districts and college and university placement centers and reviews other information available on a national, regional, and state basis to determine teaching areas that are in short supply. It conveys its findings to school district officials for use in evaluating their candidates for the scholarship.

D. Completed applications and an evaluation of the applicant by the counselor, principal, district superintendent, or all of them, is forwarded to the State Superintendent before March 16 of the application year. A list of applicants is included, arranged in descending order of total points awarded in relation to the established criteria.

E. By April 30, recipients of scholarships and alternates are notified by mail of the award of a scholarship or of their alternate status. A list of those students to whom scholarships have been awarded and of the alternates is forwarded to the Office of the State Board of Regents together with a copy of the application form received from each awardee and alternate.

F. Candidates who have been recommended for premier scholarships are notified and are advised as to the schedule for interviews for final selection. Premier scholarship recipients are notified by May 31.

G. If a student declines a scholarship that has been awarded, the scholarship is reallocated to the next alternate on the list up to December 31 of that same year. Any scholarships awarded through the Board that are vacated in excess of the number of alternates are reallocated to the Board before the ratio of 200 to 165 is applied to the total number of scholarships available for award for the following year.

**KEY: student financial aid, career education, education**

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| **1987** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-401(3)** |
| | **53B-10-101** |

**R277. Education, Administration.**
**R277-721. Deadline for CACFP Sponsor Participation in Food Distribution Program.**
**R277-721-1. Definitions.**

A. "CACFP" means Child and Adult Care Food Program.

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

**R277-721-2. 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, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(3) which permits the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify deadlines for sponsor participation in the food distribution program.

**R277-721-3. Deadlines.**

A. Sponsors approved for participation in CACFP before June 1 shall have the opportunity to choose to receive USDA donated entitlement commodities or cash-in-lieu of entitlement commodities for the coming federal fiscal year.

B. New sponsors at new sites approved by CACFP participation after May 31 shall receive cash-in-lieu of entitlement commodities and are not eligible to receive entitlement commodities until the federal fiscal year following the first May 31 of participation.

C. New sponsors purchasing existing sites already receiving entitlement commodities and approved for CACFP participation after May 31 shall have the option of continuing to receive entitlement commodities or receiving cash-in-lieu of commodities for all sites under its sponsorship.

**KEY: food aid programs**

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| **1987** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-401(3)** |
| | **53A-1-402(3)** |

**R277. Education, Administration.**
**R277-722. Withholding Payments and Commodities in the CACFP.**
**R277-722-1. Definitions.**

A. "CACFP" means Child and Adult Care Food Program.
B. "Board" means the Utah State Board of Education.
C. "USOE" means the Utah State Office of Education.

**R277-722-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(3) which permits the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify payment procedures required of delinquent CACFP participants.

**R277-722-3. Payment Procedures.**

CACFP participants who do not pay commodity billings or respond to audit and review citations and overclaims, or both, are subject to the following:

A. If no appeal has been submitted on an overclaim citation or billing, claims for reimbursement shall not be paid unless a corrective action plan or arrangement for repayment of the overclaim, approved by the USOE, is received in the USOE prior to the end of the next whole claiming period following notice of delinquency.

B. If commodity charges are not paid within 30 days of billing, subsequent claims for reimbursement shall not be paid and commodities shall not be allocated or delivered until payment is received.

C. If response, payment, or appeal is not received by the USOE within 30 days plus a preceding whole claiming period, with notice of the delinquency, participation in CACFP is suspended and no reimbursements or commodity deliveries shall occur until response is received and approved by the USOE.

D. Delinquency of 60 days plus a preceding whole claiming period, with notice of delinquency, is cause for the permanent denial of previously unpaid reimbursements and continued denial of commodity allocations and deliveries. Participation shall be reinstated only with full payment of overclaims and commodity billings and initiation of corrective actions approved by on-site inspection at the reasonable convenience of the USOE.

**KEY: food aid programs**

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| **1987** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-401(3)** |
| | **53A-1-402(3)** |

**R277. Education, Administration.**
**R277-730. Alternative High School Curriculum.**
**R277-730-1. Definitions.**

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

B. "Alternative high school" means a non-standard high school, other than a home school, for students with special needs, interests, or learning styles, which meets all of the following criteria:

(1) the local school has been officially designated as a high school by the local board of education;

(2) a principal or coordinator and staff are assigned to the school;

(3) extra costs are associated with the school such as counseling staff, library, and other supporting costs;

(4) students have access to an approved vocational education program;

(5) the school is primarily for youth in continuous education who have not graduated from high school but are working toward graduation. Its programs qualify students as candidates for graduation.

C. "Home study/drop-in program" means an education program in which a student independently completes assignments away from the school and comes to the school on a periodic basis to submit or discuss the assignments with a designated counselor or instructor.

**R277-730-2. 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, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify curriculum standards for alternative high schools.

**R277-730-3. Curriculum and Graduation Requirements.**

A. An alternative high school must provide instruction in the subjects which are required for student graduation.

B. A student education plan shall be developed, and reviewed at least annually, by each alternative high school student, the student's parent, and designated school personnel. The plan shall be guided by the general program of studies, graduation requirements, and individual student interests and goals. The plan shall identify an area of concentration in a cluster related to the student's post-secondary goal.

C.(1) Candidates for graduation must demonstrate mastery of the general core subjects and be formally assessed on mastery of the core courses during or at the conclusion of grades 10 and 12.

(2) If a student has a condition which precludes the successful demonstration of mastery, the student education plan team may modify the competency demonstration to accommodate the condition.

**R277-730-4. Awarding Credit.**

A. Units of credit in alternative high schools are awarded on the same basis as in regular high schools. Credit shall be awarded only once for a specific required course with the same content during the secondary school experience.

B. Credit may be earned by any of the following methods:

(1) satisfactory completion of a course that meets state course standards;

(2) demonstrated proficiency via preassessment;

(3) demonstrated mastery in approved courses completed outside of the school day or year;

(4) concurrent enrollment in approved post-secondary institutions;

(5) demonstrated mastery in approved correspondence or extension courses; and

(6) upon application, demonstrated mastery in special experimental programs.

C. Assessment of mastery is the responsibility of local boards of education.

D. A maximum of three units of home study/drop-in credit may be transferred to qualify for high school graduation. A minimum of nine hours of student/teacher interaction is required for each quarter unit of credit awarded for a home study/drop-in program.

E. Make-up credit offered through an alternative high school program must be approved by the high school from which the student intends to graduate. The course work prescribed must be on the same academic level as that in which the student is deficient. For example, general math credit will not substitute for algebra or geometry credit.

**R277-730-5. Operation Procedures Related to Curriculum.**

A. Home study/drop-in programs in alternative high schools must be approved by the Board or by the respective board of education if the school is operated by a district.

B. Alternative high school teachers must hold a Basic or Standard Teaching Certificate endorsed in one or more subjects required in the core curriculum approved by the Board. In addition, they must have completed not fewer than nine quarter hours of state approved college or in-service course work in each of the subject areas to which they are assigned.

C. Curriculum and teaching strategies shall be designed to meet the individual needs of the student. A written course description shall be available for all classes taught.

D. Students shall have access to a media center containing books, film strips, videos, tapes, and equipment.

E. The alternative high school must have an outreach program in place to contact enrolled students who are not attending the school.

**KEY: alternative school, education**

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| **1987** | **Art X Sec 3** |
| **Notice of Continuation January 8, 2008** | **53A-1-402(1)** |
| | **53A-1-401(3)** |

**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 Automotive 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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| **July 13, 2007** | **19-2-104** |
| **Notice of Continuation July 13, 2007** | **19-1-402** |
| | **59-7-605** |
| | **59-10-1009** |

**R307. Environmental Quality, Air Quality.**
**R307-214. National Emission Standards for Hazardous Air Pollutants.**
**R307-214-1. Part 61 Sources.**

The provisions of 40 Code of Federal Regulations (CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2007, are incorporated into these rules by reference. For source categories delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

**R307-214-2. Part 63 Sources.**

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2007, or later for those whose subsequent publication citation is included below, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission

Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission

Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(98) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(99) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(100) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(101) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources, published on July 16, 2007 at 72 FR 38864.

(102) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources, published on July 16, 2007 at 72 FR 38864.

(103) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds, published on July 16, 2007 at 72 FR 38864.

(104) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources, published on July 16, 2007 at 72 FR 38864.

(105) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources, published on July 16, 2007 at 72 FR 38864.

(106) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources, published on July 16, 2007 at 72 FR 38864.

**KEY: air pollution, hazardous air pollutant, MACT**
**January 11, 2008 19-2-104(1)(a)**
**Notice of Continuation January 11, 2008**

**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 vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

**R307-405-2. Applicability.**

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2007.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby 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) are hereby incorporated by reference.

(2)(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 following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(3) "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.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(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), that is hereby incorporated by reference.

**R307-405-6. Ambient Air Increments.**
The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

**R307-405-7. Ambient Air Ceilings.**
The provisions of 40 CFR 52.21(d) 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) are hereby incorporated by reference.

**R307-405-10. Exemptions.**
(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.
(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

**R307-405-11. Control Technology Review.**
The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

**R307-405-12. Source Impact Analysis.**
The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

**R307-405-13. Air Quality Models.**
The provisions of 40 CFR 52.21(l) 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) are hereby incorporated by reference.
(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

**R307-405-15. Source Information.**
The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

**R307-405-16. Additional Impact Analysis.**
The provisions of 40 CFR 52.21(o) 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) 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) 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.**
The provisions of 40 CFR 52.21(r) are hereby incorporated by reference.

**R307-405-20. Innovative Control Technology.**
(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) 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 (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.
(2) (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 "June 16, 2006".

**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**
**January 11, 2008 19-2-104**
**Notice of Continuation July 13, 2007**

**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 |
| 17 | Davenport and Flagstaff Smelters | April 30, 2003 |
| 18 | Eureka Mills | September 5, 2002 |
| 19 | Five Points PCE Plume | September 19, 2007 |

(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 |

(c) Scored Sites
Reserved.

**KEY: hazardous substances, hazardous substances priority list**
**January 2, 2008 19-6-311**
**Notice of Continuation July 19, 2007**

**R317. Environmental Quality, Water Quality.**
**R317-9. Administrative Procedures.**
**R317-9-1. Scope of Rule.**

(1) This rule R317-9 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 5, Utah Water Quality Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

(2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 5, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or, in the case of an adjudication brought to deny or revoke a permit, before the executive director. Either the board or the executive director may appoint a presiding officer to hear the matter.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under subsection 63-46b-1(2)(k) and are not governed by sections R317-9-3 through R317-9-14 of this Rule. Initial orders and notices of violation are further described in R317-9-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R317-9.

(5) The Utah Administrative Procedures Act and this rule R317-9 also govern any other formal adjudicative proceeding before the Water Quality Board.

**R317-9-2. Initial Proceedings.**

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) eligibility of pollution control equipment for tax exemptions under Utah Code Ann. 19-2-123 through 19-2-127 and R317-1-8;

(e) requests for variances, exemptions, and other approvals;

(f) assessment of fees except as provided in R317-9-14(7);

(g) requests or approvals for experiments, testing or control plans;

(h) certification of wastewater treatment works operators under R317-10; and

(i) certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

**R317-9-3. Contesting an Initial Order or Notice of Violation.**

(1) Procedure.

(a) Initial orders denying or revoking a permit may be contested by filing a written Request for Agency Action to the Executive Director, Department of Environmental Quality, PO Box 144810, Salt Lake City, Utah 84114-4810.

(b) Other initial orders and notices of violation, as described in R317-9-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Water Quality Board, Division of Water Quality, PO Box 144870, Salt Lake City, Utah 84114-4870.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of Subsection 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the presiding officer to determine whether the person has standing under R317-9-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

**R317-9-4. Designation of Proceedings as Formal or Informal.**

(1) Contest of an initial order or notice of violation resulting from proceedings described in R317-9-2(1) shall be conducted as a formal proceeding.

(2) The presiding officer in accordance with Subsection 63-46b-4(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

**R317-9-5. Notice of and Response to Request for Agency Action.**

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with Subsection 63-46b-3(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R317-9-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

**R317-9-6. Parties and Intervention.**

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the presiding officer has granted intervention under R317-9-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of Section 63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R317-9-6(2)(c).

(c) A person seeking to intervene in a proceeding for

which agency action has not been initiated under Section 63-46b-3 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the presiding officer for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of Subsection 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

**R317-9-7. Conduct of Proceedings.**

(1) Role of Executive Director

The Executive Director is the 'agency head' as that term is used in UAPA for proceedings regarding the denial or revocation of a permit. The Executive Director is also the "presiding officer", as that term is used in UAPA, except the Executive Director may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(2) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b for all proceedings not specified in R317-9-7(1). The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(3) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed.

(4) Counsel for the Presiding Officer. The Presiding Officer may request that Counsel for the Presiding Officer provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(5) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(6) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(7) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-46b-10, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(8) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(9) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(10) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

**R317-9-8. Hearings.**

The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

**R317-9-9. Orders.**

(1) Recommended Orders of Appointed Presiding Officers.

(a) The appointed presiding officer shall prepare a recommended order for the board or executive director, as appropriate, and shall provide copies of the recommended order to the board or executive director and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board or executive director shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board or executive director shall then determine whether to accept, reject, or modify the recommended order. The board or executive director may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(d) The board or executive director may modify this procedure with notice to all parties.

(2) Final Orders. The board or executive director shall issue a final order which shall include the information required by Section 63-46b-10 or Subsection 63-46b-5(1)(i).

**R317-9-10. Stays of Orders.**

(1) Stay of Contested Permit Conditions in UIC or UPDES Permits Pending Final Agency Action.

(a) If a permit applicant files a request for review under this rule for a UIC or UPDES permit that involves a new facility or new injection well, new source, new discharger or recommending discharger, no stay is available and the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action.

(b) If any other permittee files a request for review of a UIC or UPDES permit under this rule in order to contest permit conditions, the effect of the contested permit conditions shall be stayed pending final agency action. The effect of uncontested permit conditions shall be stayed only as described in paragraph R317-9-10(1)(c).

(c) Uncontested conditions which are not severable from those contested under R317-9-10(1)(b) shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Presiding Officer. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(d) Stays based on cross effects. The presiding officer may grant a stay of an order on the grounds that administrative review of one permit may result in changes to another state-issued permit only when each of the permits involved has been challenged as provided in this rule.

(2) Stay of All Other Orders Pending Agency Action.

(a) For any order not described in R317-9-10(1), a party seeking a stay of the challenged order during an adjudicative proceeding shall file a motion with the presiding officer. If granted, a stay would suspend the challenged order for the period as directed by the presiding officer.

(b) The presiding officer may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(3) Stay of Orders Pending Judicial Review.

(a) A party seeking a stay of the presiding officer's final order during the pendency of judicial review shall file a motion with the presiding officer that issued the final order.

(b) The presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R317-9-10(1)(b) are met.

**R317-9-11. Reconsideration.**

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in Section 63-46b-13.

**R317-9-12. Disqualification of Board Members or Other Presiding Officers.**

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

**R317-9-13. Declaratory Orders.**

(1) A request for a declaratory order may be filed in accordance with the provisions of Section 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R317-9-4(2) above.

(3) The provisions of Section 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R317-9.

**R317-9-14. Miscellaneous.**

(1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

(2) Extensions of Time. Except as otherwise provided by statute, and if requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R317-9-7(6). The presiding officer may also postpone hearings. If the Board is presiding officer, the chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding,

may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. Admission pro hac vice shall be granted for nonresident applicants only if the applicant associates with an active local member of the Utah State Bar with whom counsel for all parties and the presiding officer may communicate regarding the proceeding and upon whom papers will be served.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R317-9-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63, Chapter 2, Utah Government Record Access and Management Act, are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

(8) Grants and loans. Determinations with respect to grants and loans made under R317-101, R317-102, and R317-103 are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

**KEY: water pollution, administrative procedures, hearings**
**February 5, 2003 63-46b**
**Notice of Continuation February 1, 2008**

**R357. Governor, Economic Development.**
**R357-2. Rural Broadband Service Fund.**
**R357-2-1. Purpose.**

(1) The purpose of these rules is to provide:

(a) the procedures for and content of applications to the Governor's Office of Economic Development for grants from the Rural Broadband Service Fund;

(b) the method for providing public notice of applications and receipt of public comment on applications or competing applications;

(c) the criteria upon which the Governor's Office of Economic Development will determine whether to award a grant from the Rural Broadband Service Fund; and

(d) the procedures for receiving payments from the Rural Broadband Service Fund.

**R357-2-2. Authority.**

(1) Subsection 63-38f-2304 (2)(d)requires the office to make rules governing the following aspects of the Rural Broadband Service Fund:

(a) the method of providing public notice;

(b) the time period for public comment; and

(c) the manner of filing a competing application.

(2) Subsection 63-38f-2306 permits the office to make additional rules governing the Rural Broadband Service Fund as it deems necessary to administer the Rural Broadband Service Fund, with the advice of the board, and in accordance with Title 63 Chapter 46a, Utah Administrative Rulemaking Act.

**R357-2-3. Definitions.**

(1) As used in these rules the following terms are used as defined in section 63-38f-2302:

(a) "Broadband service" means any wire line technology identified by the director as having the capacity to transmit data from and to a subscriber's computer to the Internet or Internet-related services at a minimum rate of data transmission of 256 kilobits per second.

(b) "Fund" means the restricted account known as the Rural Broadband Service Fund created in Section 63-38f-2303.

(c) "Provider" means an entity that will install or have installed under its supervision, and will own facilities and use them to provide retail broadband service to subscribers in a rural area.

(d) "Rural area" means any territory in the state:

(i) within a city, town, or unincorporated area with a population of 10,000 or less based on the most recently published data of the United States Census Bureau; and

(ii) in which broadband service is not available.

(2) As used in these rules:

(a) "Act" means the Rural Broadband Service Fund Act as provided in Section 63-38f-2301, et seq.

(b) "Board" means the Board of Business and Economic Development as provided in Section 63-38f-301.

(i) Any member of the board that represents or has a financial interest in any provider competing for grants under the act shall be disqualified from participation in review of or deliberations regarding applications or other activities of the board under the act or these rules.

(c) "Cost of deployment of broadband service" means all costs associated with the installation of broadband service, including the cost of materials and supplies, the cost of professional services, labor, equipment and permit fees incurred in installation, cost of right-of-way and real property required for the installation, normal overheads, costs of supervision, costs for any interconnection facilities necessary to provide broadband service, and any other deployment costs identified by the provider as one-time network installation costs.

(i) "Cost of deployment of broadband service" does not include any recurring operational costs.

(d) "Director" means the executive director of the Governor's Office of Economic Development as provided in Section 63-38f-202.

(e) "Office" means the Governor's Office of Economic Development as provided in Section 63-38f-201.

(f) "Project" means the installation of broadband service in a rural area by a provider.

(g) "Wire line technology" means a technology under which the broadband signal is carried between the provider and the subscriber over a wire, coaxial cable, or fiber optic cable. The office may not discriminate against any accepted technology for provision of broadband service other than for reasons stated in subsection 63-38f-2304 (8)(a).

**R357-2-4. Method of Providing Public Notice and Time Period for Public Comment and Notice for Competitive Applications.**

(1) Upon acceptance of an application for deployment of broadband service in a rural area that complies with R357-2-6 and which is without deficiencies and complete, the office will open a 30-day competing application period following the issuance of public notice. During this time period the office will accept competing applications that comply with R357-2-6 to provide broadband service in exactly the same rural area as proposed in the first application received as specified in R357-2-6 (3).

(2) Public notice of acceptance of an application for deployment of broadband service in a rural area shall be provided within 15 days of acceptance by the office as follows:

(a) notice of the application shall be posted by the office on its official website;

(b) notice shall be provided by the office through email to any person that has previously requested a copy of such notices; and

(c) notice by the office may be facilitated through associations, providers or applicants as directed by the office.

(3) Notice of the application shall be delivered by the provider through registered mail or personal delivery to the chief executive officer or executive body of:

(a) any town or city included in whole or in part within the proposed service area of the project; and

(b) any county in which an unincorporated area is included in whole or in part within the proposed service area of the project.

(4) The notice from the provider shall:

(a) identify the provider and the project generally, including its proposed service area and wire line technology, but need not disclose the proposed installation budget and timeline, business plan, or any other information designated by the provider as competitively sensitive and accepted by the office as sensitive: and

(b) inform interested persons that they have 15 days within which to provide written comments on the application.

**R357-2-5. Manner of Filing a Competing Application, Public Notice and Public Comment on a Competing Application.**

(1) Any competing application submitted to the office shall comply with the requirements of R357-2-6, and the office shall review a competing application for acceptance in the same manner as an initial application; and

(a) if a competing application is rejected by the office, the provider submitting the competing application may have the opportunity to complete, correct and resubmit the application as provided in R357-2-6 (4)(a) provided it is completed, corrected and resubmitted within the 30-day competing application period.

(2) Both the initial application and the competing application will be publicly noticed as provided by R357-2-4;

and

(a) written comments on the applications will be received for 15 days following the close of the competing application period; and

(b) no additional competing applications may be submitted after the close of the 30-day competing application period.

**R357-2-6. Procedures for Applications for Grants From Fund.**

(1) A provider that wishes to deploy broadband service in a rural area may file an application for a grant from the fund with the office.

(2) An application shall:

(a) be accompanied by an affidavit executed by an officer, general partner, member, principal, or other authorized representative of the provider under oath verifying that the information in the application is true and correct to the best of the knowledge, information and belief of the individual signing the affidavit and that the individual signing the affidavit has the authority to submit the application on behalf of the provider;

(b) include the following information regarding the provider:

(i) the company name, street and mailing address, telephone number, fax number, and email address and federal tax ID number of the provider;

(ii) the name, title, address, telephone number, fax number, and email address of the individual or individuals with whom contacts regarding the application should be made;

(iii) evidence that the provider is properly organized and authorized to do business in the state;

(iv) information, including financial statements, demonstrating the provider's technical, managerial, and financial qualifications to deploy the broadband service and to continue to provide broadband service to customers subscribing to the broadband service;

(c) provide Incumbent Local Exchange Carrier (ILEC) or Competitive Local Exchange Carrier (CLEC) certification as granted by the Utah Public Service Commission and information regarding prior deployments of broadband service by the provider.

(3) An application shall provide the following information regarding the proposed project:

(a) a description of the proposed project, including:

(i) the location of the proposed project; and

(ii) a map showing the proposed service area;

(b) Information demonstrating that the proposed service area is a rural area, including:

(i) information on the population of the proposed service area or any municipality in which it is located from the most recently published data of the United States Census Bureau; and

(c) a description of the facilities that the provider plans to install, including:

(i) the wire line technology that will be used in providing broadband service;

(d) the number of potential subscribers;

(e) the budget for the project;

(f) the timeline for deployment of broadband service;

(g) the proposed initial set up charge, if any, to subscribers, including any equipment charge;

(i) the terms and conditions upon which broadband service will be established and will continue to be provided to subscribers;

(h) include a form of public notice of the application consistent with R357-2-4(4); and

(i) such other information as the provider wishes to provide.

(4) Within 60 days after an initial application is received by the office, the office shall review the application to determine if it is complete and if it proposes a project that appears to be eligible for a grant from the fund. If the application is complete and proposes a project that appears eligible, the office shall notify the provider that it is accepted for consideration. If the application is deficient, the office shall promptly return it to the provider, identifying the areas of deficiency.

(a) A provider shall have 15 business days to correct, complete and resubmit any application found deficient by the office. Any application resubmitted after 15 business days shall be deemed to be a new application.

(5) Once an initial application is accepted by the office as complete, the office shall within 15 days open a competing application period and provide public notice per R357-2-4(2).

(6) The office shall treat all competitively sensitive information submitted in an application as confidential and protected business records under the Government Records Access and Management Act.

**R357-2-7. Ranking and Approval of Applications.**

(1) The office shall review and rank for approval accepted applications, based upon the following criteria:

(a) the financial, managerial, and technical qualification of the provider;

(b) the number of potential subscribers to be served;

(c) the reasonableness of the cost of deployment;

(d) the timeline of deployment;

(e) the initial set up charge, if any, to subscribers, including any equipment charge; and

(f) the terms and conditions on which broadband service will be provided.

(2) In ranking applications, the office may:

(a) obtain information from the provider or others;

(b) conduct its own analysis of any issue relevant to the application, including economic development impacts of the proposed project;

(c) consider economic benefits to potential subscribers or to the state likely to accrue as a result of completion of the project;

(d) require the submission of a business plan and consider the viability of the provider's business plan to continue providing broadband service to all or some subscribers in the rural area;

(e) require the provider to make one or more presentations to the office, director or the board;

(f) require the provider to agree to make reasonable adjustments to the application or agree to reasonable conditions if necessary to make the application consistent with the act in order for the application to continue to receive consideration;

(g) consult with the Division of Public Utilities created in Section 13-1-2;and

(h) not discriminate against any accepted technology for provision of broadband service other than for reasons of cost or the terms and conditions upon which a provider proposes to provide broadband service to potential subscribers.

(3) If after the process of ranking the applications the office is unable to substantially differentiate between competing applications it may give preference to the application which was filed first.

(4) Based on the ranking of the applications in subsections R357-2-7(1), (2), and (3), the office shall inform the highest ranked provider that its application, including any modification to the application accepted by the provider pursuant to subsection R357-2-7(2)(f) is approved, subject to entry into an agreement with the office and successful performance of the agreement.

(5) Once an application for a given rural area is approved and the office has entered into an agreement with the selected provider for deployment of broadband service to that rural area, other applications for deployment of broadband service to the same rural area will be held in abeyance by the office until

successful completion of the project as confirmed by the office at which time the competing applications will be removed from the ranking and shall be deemed denied.

(6) If a project is determined by the office as unable to be completed by the selected provider, the office may consider competing applications if in the judgment of the director the project cannot be completed by the provider originally selected.

(7) The office or director may continue approving applications in the order of ranking from highest to lowest until the office has entered into agreements with providers that provide for total grants equal to the lesser of:

(a) the total amount available for grants from the fund; or

(b) the total amount of grants sought by all approved applications.

(8) No grant will be approved for an amount greater than the lesser of one-half of:

(a) the actual cost of deployment of broadband service in the rural area as established by verified accounts filed with the office by the provider after completion of the project; or

(b) the budgeted amount for deployment of broadband service in the rural area as established by the application as modified prior to approval pursuant to subsection R357-2-3(c).

**R357-2-8. Procedures Verification of Completion and for Payment of Grants From the Fund.**

(1) Upon completion of an approved project in accordance with the terms of the agreement between the provider and the office, the provider shall provide a report to the office. The report shall:

(a) be accompanied by an affidavit executed by an officer, general partner, member, principal, or other authorized representative of the provider under oath verifying that the information in the report is true and correct to the best of the knowledge, information and belief of the individual signing the affidavit and that the individual signing the affidavit has the authority to submit the report on behalf of the provider;

(b) state that the project has been completed in accordance with the agreement; and

(c) provide accounts establishing the actual cost of deployment.

(2) The office shall examine the report of the provider submitted pursuant to subsection R357-2-8(1) and may reasonably investigate any matter related to the report. If the office determines that there is any material deficiency in the provider's performance of its obligations under the agreement, it shall notify the provider of each deficiency and the provider shall have reasonable opportunity to correct the deficiency or to dispute that any deficiency exists.

(3) The director shall disburse the grant as provided in the agreement to the provider following:

(a) the provider's submission of the report;

(b) the office's determination that the project has been completed in accordance with the agreement; and

(c) the office's review and acceptance of the accounts establishing the actual cost of deployment as submitted by the provider pursuant to R357-2-8 (1);or

(d) if the office identifies deficiencies, following the provider's certification that it has corrected the deficiencies and the director has verified that the deficiencies are corrected.

(4) If the provider contests the specification of deficiencies by the office, the board and director shall review the report and the office claim and determine whether material deficiencies exist. If after consultation with the board, the director determines that no material deficiency exists, the director shall disburse the grant. If the director determines that material deficiencies continue to exist, the director shall notify the provider of each material deficiency and the provider shall have reasonable opportunity to correct the material deficiency or to dispute that any material deficiency exists.

**KEY: broadband, job creation, rural economic development, Rural Broadband Service Fund**

**January 30, 2008** **63-38f-2301**
**63-38f-2302**
**63-38f-2303**
**63-38f-2304**
**63-38f-2305**
**63-38f-2306**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-21. Physical and Occupational Therapy.**
**R414-21-1. Introduction and Authority.**

(1) This rule governs physical and occupational therapy services provided to Medicaid clients. It implements the provision of physical therapy and occupational therapy evaluation and treatment as authorized by 42 CFR 440.110(a)(1)(2), 440.110(b)(1)(2), and 440.70(b)(4).

(2) Physical and occupational therapy are optional services for adults.

**R414-21-2. Eligibility Requirements.**

Physical therapy and occupational therapy services are available to categorically and medically needy individuals under Medicaid.

**R414-21-3. Program Access Requirements.**

(1) Physical therapy may be provided only by a licensed physical therapist. The physical therapist may have a physical therapy assistant or aide under the physical therapist's immediate supervision provide the direct service so long as the physical therapist is present in the area where the person supervised is performing services and immediately available to assist the person being supervised in the services being performed.

(2) Occupational therapy may be provided only by a licensed occupational therapist. The occupational therapist may have a occupational therapy assistant under the occupational therapist's immediate supervision provide the direct service so long as the occupational therapist is present in the area where the person supervised is performing services and immediately available to assist the person being supervised in the services being performed.

**R414-21-4. Service Coverage.**

(1) Medicaid covers the following physical therapy services:

(a) therapeutic exercise;

(b) the application of heat, cold, water, air, sound, massage, and electricity;

(c) recipient evaluations and tests;

(d) measurements of strength, balance, endurance, range of motion and activities.

(2) Medicaid covers occupational therapy services to treat the following:

(a) traumatic brain injury;

(b) traumatic spinal cord injury;

(c) traumatic hand injury;

(d) congenital anomalies or developmental disabilities resulting in neurodevelopmental deficits; or

(e) cerebral vascular accident (CVA), but only if treatment begins within 90 days after the onset of the CVA.

(3) In exercising its best professional judgement to determine the amount, duration, and scope of optional services sufficient to reasonably achieve the purpose of the physical therapy or occupational therapy service, the Department uses the guidelines provided by the American Physical Therapy Association and the American Occupational Therapy Association to determine the number of visits allowed for the diagnosis.

(4) Medicaid does not cover:

(a) services for social or educational needs only;

(b) services to a recipient with a stable chronic condition whose function cannot be improved by the application physical therapy services;

(c) service to a recipient with no documented potential for improvement or who has reached maximum potential for improvement;

(d) non-diagnostic, non-therapeutic, repetitive or reinforcing procedures or other maintenance services, except for services that are both:

(i) to children under the age of 20 years; and

(ii) are limited to one therapy visit per month to train the caregiver to provide routine care, and repetitive or reinforced procedures in the residence.

(5) Medicaid pays for only one physical therapy session per day. Medicaid pays for only one occupational therapy session per day.

(6) Services to a resident of an Intermediate Care Facility for the Mentally Retarded are paid as part of the per diem payment for the recipient. Medicaid does not pay separately for those services.

(7) Physical therapy is limited to 20 visits annually without obtaining prior authorization to assure that the sessions are within the amount, duration, and scope limits established by the Department.

(8) Occupational therapy is limited to 20 visits annually without prior authorization to assure that the visits are within the amount, duration, and scope limits established by the Department.

**R414-21-5. Services Provided Through Home Health Agencies.**

(1) If a physical therapy service is provided outside of the physical therapists treatment facility, the provider must obtain prior authorization from the Department for each physical therapy session, including the evaluation. to assure that the sessions are within the amount, duration, and scope limits established by the Department and that the recipient could not obtain the service at the physical therapist's treatment facility.

(2) The Department does not cover occupational therapy services that are not provided at the occupational therapist's treatment facility.

**R414-21-6. Reimbursement.**

(1) Physical and occupational therapy is reimbursed using the fee schedule established in the Utah Medicaid State Plan and incorporated by reference in Section R414-1-5.

(2) Services provided by a physical therapy assistant or aide or by an occupational therapy assistant must be billed as part of the services provided by the supervising physical or occupational therapist.

**KEY: Medicaid**
**January 10, 2008** **26-1-4.1**
**Notice of Continuation April 16, 2007** **26-1-5**
**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-27. Medicare Nursing Home Certification.**
**R414-27-1.**

All skilled nursing homes must be certified for Medicare participation as a condition of Medicaid certification. The effects of this rule will be to enable more third-party collections (Medicare) and reduce Medicaid nursing home payments.

**KEY: medicaid**
**1987 26-1-5**
**Notice of Continuation January 17, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-52. Optometry Services.**
**R414-52-1. Introduction and Authority.**

The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.60.

**R414-52-2. Definitions.**

The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16a, apply to this rule.

**R414-52-3. Client Eligibility Requirements.**

Optometry services are available to categorically and medically needy individuals.

**R414-52-4. Service Coverage.**

(1) Optometry services include examination, evaluation, diagnosis and treatment of visual deficiency, removal of a foreign body, and the provision of eyeglasses. In addition, Medicaid medical services performed by physicians may also be performed by optometrists under the Utah Optometry Practice Act.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

**R414-52-5. Reimbursement.**

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. A $3 copayment for each pair of eyeglasses is applied to Medicaid recipients who fall under the copayment requirement. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

**KEY: Medicaid, optometry**
**February 1, 2008 26-1-5**
**Notice of Continuation June 6, 2003 26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-53. Eyeglasses Services.**
**R414-53-1. Introduction and Authority.**

The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.120(d).

**R414-53-2. Definitions.**

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

**R414-53-3. Client Eligibility Requirements.**

Eyeglasses are available to categorically and medically needy individuals.

**R414-53-4. Service Coverage.**

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist documents that they are medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist documents that an earlier replacement is medically necessary. Circumstances that warrant providing new eyeglasses or contact lenses are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they are damaged through client negligence or abuse.

(5) The audiologist or hearing aid provider may provide frames that have hearing aids placed in the earpieces. The prescribing physician or optometrist must dispense the lenses for these frames.

(6) The following services may be provided if the prescribing physician or optometrist documents that they are medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present that render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following services are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

**R414-53-5. Reimbursement.**

(1) The Department pays for lenses and standard frames on a fee-for-service basis, based on CPT codes as described in the State Plan, Attachment 4.19-B. A $3 copayment for each pair of eyeglasses is applied to Medicaid recipients who fall under the copayment requirement.

(2) The Department pays the lower of the amount billed or the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

**KEY: Medicaid, eyeglasses**
**February 1, 2008 26-1-5**
**Notice of Continuation June 6, 2003 26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-301. Medicaid General Provisions.**
**R414-301-1. Authority.**

The Department of Health may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more of the medical programs listed below. The Department of Health is responsible for the administration of these programs:

(1) Aged Medicaid (AM);
(2) Blind Medicaid (BM);
(3) Disabled Medicaid (DM);
(4) Family Medicaid (FM);
(5) Child Medicaid (CM);
(6) Title IV-E Foster Care Medicaid (FC);
(7) Medicaid for Pregnant Women (PG);
(8) Prenatal Medicaid (PN);
(9) Newborn Medicaid (NB);
(10) Transitional Medicaid (TR);
(11) Refugee Medicaid (RM);
(12) Utah Medical Assistance Program (UMAP);
(13) Qualified Medicare Beneficiary Program (QMB);
(14) Specified Low-Income Medicare Beneficiary Program (SLMB);
(15) Qualifying Individuals, Group 1 Program (QI-1);
(16) Medicaid Work Incentive;
(17) Medicaid Cancer Program;
(18) Primary Care Network Demonstration, which includes the Primary Care Network and the Covered-at-Work Programs.

**R414-301-2. Definitions.**

The following definitions apply in rules R414-301 through R414-308:

(1) "Agency" means any local office or outreach location of either the Department of Health or the Department of Workforce Services that accepts and processes applications for Medicaid and Medicare Cost-Sharing programs. In incorporated federal materials, "agency" means the Utah Department of Health.

(2) "Applicant" means any person requesting assistance under any of the programs listed in R414-301.

(3) "Assistance" means medical assistance under any of the programs listed in R414-301.

(4) "CHEC" means Child Health Evaluation and Care.

(5) "Client" means an applicant or recipient of any of the programs listed in R414-301.

(6) "Department" means the Department of Health.

(7) "Director" or "designee" means the director or designee of the Division of Health Care Financing.

(8) "Local" office means any community office location of the Department of Workforce Services, the Department of Human Services or the Department of Health where an individual may apply for medical assistance programs.

(9) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(10) "QI-1" means the Qualifying Individuals Group 1 program, a Medicare Cost-Sharing program.

(11) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(12) "Recipient" means any individual receiving assistance under any of the programs listed in R414-301-1. It may also be used to mean someone who is receiving other assistance or benefits such as SSI, in which case the text will specify such other type of benefit or assistance.

(13) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including:

(a) change in the source of income;
(b) change of more than $25 in gross income;
(c) changes in household size;
(d) changes in residence;
(e) gain of a vehicle;
(f) change in resources;
(g) change of more than $25 in total allowable deductions;
(h) changes in marital status, deprivation, or living arrangements;
(i) pregnancy or termination of a pregnancy;
(j) onset of a disabling condition; and
(k) change in health insurance coverage including changes in the cost of coverage.

(14) "Resident of a medical institution" means a single client who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married clients are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(15) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(16) "Spenddown" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid, or some combination of these.

(17) "Spouse" means any individual who has been married to a client or recipient and has not legally terminated the marriage.

(18) "Worker" means a state employee who determines eligibility for Medicaid and Medicare Cost-Sharing programs.

**R414-301-3. Client Rights and Responsibilities.**

(1) Anyone may apply or reapply any time for any program.

(2) If someone needs help to apply he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Workers will identify themselves to clients.

(4) Clients will be treated with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously.

(6) If a client must be visited after working hours, the worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The Department may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any department local office.

(12) The client must repay any understated liability. The client is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the client's behalf to Medicaid Health Plans and mental health providers even if the client does not receive a direct medical service from these entities.

(13) The client must report a reportable change as defined in R414-301-2(12) to the local office within ten days of the day the change becomes known.

**R414-301-4. Safeguarding Information.**

(1) The department adopts 42 CFR 431(F), 2001 ed., which is incorporated by reference. The department requires compliance with Sections 63-2-101 through 63-2-909.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information released cannot include information obtained through an income match system.

**R414-301-5. Complaints and Agency Conferences.**

(1) A client may request an agency conference at any time to resolve a problem regarding the client's case. Requests shall be granted at the department's discretion. Clients may have an authorized representative attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing within 90 days of the date on the notice with which the client disagrees to assure the right to have a fair hearing if the client is not satisfied with the outcome of the agency conference.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in R414-306-6, the client may proceed with the formal fair hearing process.

(5) The department provides proper notice as defined in R414-308-5 if there are any additional adverse changes in the client's eligibility that are made as a result of the agency conference. The client then has a right to request a fair hearing based on the new decision letter of an additional adverse action.

**R414-301-6. Hearings.**

(1) The department adopts 42 CFR 431.220 through 431.246, 2001 ed., which is incorporated by reference. The department requires compliance with Title 63, Chapter 46b.

(2) If a client's hearing request concerns only medical assistance, the department shall conduct a formal hearing.

(3) If a client's hearing request concerns food stamps or financial assistance in addition to medical assistance, the Department of Workforce Services shall conduct an informal hearing.

(4) Hearings may be conducted by telephone if the client agrees to that procedure.

(5) Clients must request a hearing in writing. The written request must include a clear expression stating a desire to present their case.

(6) Clients must ask for the hearing within 90 days of the mailing date of the notice regarding a disagreement with any proposed action.

(7) The hearing officer may schedule one or more pre-hearing conferences to clarify the issues to be heard at the hearing and to arrange exchange of relevant documents.

(8) If the hearing was conducted by the department, the client may appeal the hearing decision to the Court of Appeals.

(9) If the hearing was conducted by the Department of Workforce Services, the client may appeal a hearing decision to the director of the Division of Adjudication within the Department of Workforce Services, or to the District Court.

(10) If an action requires advance notice, the recipient shall continue to receive assistance if the hearing is requested before the effective date of the action, or within ten days of the mailing date of the notice of action. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. The recipient may choose not to accept the benefits offered pending a hearing decision.

(11) If an agency action does not require advance notice, assistance shall be reinstated if a hearing is requested within ten days of the mailing date of the notice unless the sole issue is one of state or federal law or policy.

(12) An applicant who has requested a hearing shall receive medical assistance if the hearing decision has not been issued within 21 days of the request. To receive benefits pending the hearing decision, the applicant must request the hearing within 10 days of the mailing date of the notice with which the applicant disagrees. The benefits shall begin on the same date had the application been approved but no earlier than the first day of the application month. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. Retroactive benefits shall not be approved unless the applicant would be eligible even if the department prevailed at the hearing. The applicant may choose not to accept the benefits offered pending a hearing decision.

(13) Final administrative action shall be taken within 90 days from the request for a hearing unless the client asks for a postponement or additional time is needed to allow all parties time to present and respond to the issues. The period of postponement may be added to the 90 days.

(14) Hearings shall be conducted only at the request of a client; the client's spouse; a minor client's parent; or a guardian of the client, client's spouse, minor client or minor client's parent; or a representative chosen by the client, client's spouse, or minor client's parent.

(15) A hearing contesting resource assessment shall not be conducted until an institutionalized individual has applied for Medicaid.

**KEY: client rights, Medicaid**
**July 2, 2005 26-18**
**Notice of Continuation January 31, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-302. Eligibility Requirements.**
**R414-302-1. Citizenship and Alienage.**

(1) The department adopts 42 CFR 435.406(a)(1), 1997 ed., which is incorporated by reference. The Department adopts Section 1137 and Subsection 1903(v) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference. The Department adopts Pub. L. 104-193 (401) through (403), (411), (412), (421) through (423), (431), and (435), as amended by Pub. L. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), (5571), and Pub. L. 105-306(2), which are incorporated by reference. The Department adopts Pub. L. 105-33(5307)(a) and (5566) which are incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship.

(5) A qualified alien, as defined in Pub. L. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), (5571), and Pub. L. 105-306(2) who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

**R414-302-2. Utah Residence.**

The Department adopts 42 CFR 435.403, 1997 ed., which is incorporated by reference. The Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

**R414-302-3. Local Office Residence.**

Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.

**R414-302-4. Residents of Institutions.**

(1) The Department adopts 20 CFR 416.201 and 416.211, 1997 ed. and 42 CFR 435.1008, 1997 ed., which are incorporated by reference.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

**R414-302-5. Social Security Numbers.**

(1) The Department adopts 42 CFR 435.910, 1997 ed., which is incorporated by reference. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) Clients must provide their correct Social Security Number (SSN).

(a) The Department requires clients to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

(b) The Department requires clients who do not know their SSN or provide a SSN that is questionable to provide proof of application for a SSN upon application for Medicaid.

(c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

(d) The Department requires a new proof of application for a SSN at each recertification if the SSN has not been provided previously.

**R414-302-6. Application for Other Possible Benefits.**

The Department requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits as required by 42 CFR 435.608, 2004 ed., which is incorporated by reference.

(2) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

**R414-302-7. Third Party Liability.**

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 1997 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which are incorporated by reference.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client noncooperative if the client knowingly withholds third party liability information.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

**R414-302-8. Medical Support Enforcement.**

The Department adopts 42 CFR 433.145 through 433.148, 1997 ed., which is incorporated by reference.

**R414-302-9. Relationship Determination for Family Medicaid.**

The Department adopts 42 CFR 435.602(a), 1997 ed., which is incorporated by reference.

**R414-302-10. Strikers - Family Medicaid.**

The Department adopts 45 CFR 233.106, 1997 ed., which is incorporated by reference.

**KEY: benefits, income**
**December 16, 2005 26-18**
**Notice of Continuation January 25, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-303. Coverage Groups.**
**R414-303-1. Authority and Purpose.**

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) Community Supports Waiver for Home and Community Based Services;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Brain Injury Home and Community Based Services Waiver;
(15) Physical Disabilities Waiver; and
(16) Cancer Program.

**R414-303-2. Definitions.**

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.

(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

**R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.**

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, 2001 ed., which are incorporated by reference. The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2001, for a given year, or as subsequently authorized by Congress. Applicants will be

denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

**R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.**

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) $90 will be deducted from the monthly gross earned income for each employed person.

(iii) The $30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be $200.00 per child under age two, and $175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is $160.00 per child under age two, and $140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative?s household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

**R414-303-5. 12 Month Transitional Family Medicaid.**

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).

**R414-303-6. Four Month Transitional Family Medicaid.**

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

**R414-303-7. Foster Care and Independent Foster Care Adolescents.**

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

**R414-303-8. Subsidized Adoptions.**

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

**R414-303-9. Child Medicaid.**

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

**R414-303-10. Refugee Medicaid.**

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

**R414-303-11. Prenatal and Newborn Medicaid.**

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(e)(4) and (5) and 1902(l), in effect January 1, 2005, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid, the agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Prenatal Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive Prenatal Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2005.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(11) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(12) Children may qualify for the newborn program through the month in which they turn 19.

(13) A child who is 18 but not yet 19 and meets the criteria under 1902(l)(1)(D) cannot be made ineligible for coverage under the Newborn program because of deeming income or assets from a parent, even if the child lives in the parent's home.

**R414-303-12. Pregnant Women Medicaid.**

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

**R414-303-13. DD/MR Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

**R414-303-14. Aging Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

**R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can

continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to $125.

**R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

**R414-303-17. Physical Disabilities Waiver.**

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.

**R414-303-18. Medicaid Cancer Program.**

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

**KEY: income, coverage groups, independent foster care adolescent**

**November 21, 2007 26-18-3**

**Notice of Continuation January 25, 2008 26-1-5**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-304. Income and Budgeting.**
**R414-304-1. Definitions.**

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition:

(a) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(b) "Basic maintenance standard" or "BMS" means the income level for eligibility for 1931 Family Medicaid, and for coverage of the medically needy based on the number of family members who are counted in the household size.

(c) "Benefit month" means a month or any portion of a month for which an individual is eligible for Medicaid.

(d) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(e) "Federal poverty guideline" or "FPL" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of poverty means the federal poverty guideline.

(f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

(h) "Poverty-related" refers to any one of a variety of medical assistance programs that use a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

(j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(k) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

**R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.**

(1) This rule establishes how the Department treats unearned income to determine eligibility for Aged, Blind and Disabled Medicaid and Aged, Blind and Disabled Institutional Medicaid coverage groups.

(2) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2004 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2004 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2003, which are incorporated by reference. The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The following definitions apply to this section:

(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed 1/3 of the SSI federal benefit rate plus $20.

(4) The agency does not count VA (Veteran's Administration) payments for aid and attendance or the portion of a VA payment that is made because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(5) The agency only counts as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent also counts as income of the veteran or surviving spouse who receives the payment.

(6) SSA reimbursements of Medicare premiums are not countable income.

(7) The agency does not count as income, the value of special circumstance items if the items are paid for by donors.

(8) For A, B and D Medicaid, the agency counts as income two-thirds of current child support received in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division. Child support payments that are payments owed for past months or years are countable income to determine eligibility for the parent or guardian receiving the payments.

(9) For A, B and D Institutional Medicaid, court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(10) The agency counts as unearned income, the interest earned from a sales contract on either or both the lump sum and installment payments when it is received or made available to the client.

(11) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(12) Payments under a contract, retroactive payments from

SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(13) The agency does not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs. The agency does not count as income grants, scholarships, fellowships, or gifts from other sources that are actually used to pay, or will be used to pay, allowable educational expenses. Any amount of grants, scholarships, fellowships, or gifts from other sources that are used or will be used for non-educational expenses including food and shelter expenses, counts as income in the month received. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(14) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the agency does not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, the agency deems the spouse's income to the aged, blind, or disabled spouse to determine eligibility.

(c) The agency determines household size and whose income counts for A, B or D Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency compares the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the agency compares it, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the agency does not count the ineligible spouse's income and does not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, is compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, then the income of both spouses, after allowable deductions, is compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the agency deems income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then the agency counts only the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If it exceeds the limit, then income, after allowable deductions, is compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, is compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income, after allowable deductions, is compared to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind, or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the Medicaid Work Incentive program. If both spouses want coverage, however, the agency first determines eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The agency determines household size and whose income counts for QMB, SLMB, and QI-1 assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, the agency combines income of both spouses and compares it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the agency deems income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The combined countable income is compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income is counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI-1 assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the agency will not count the income of either parent to determine a child's eligibility for B or

D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(15) For institutional Medicaid including home and community based waiver programs, the agency counts only the client in the household size, and counts only the client's income and income deemed from an alien client's sponsor, to determine contribution to cost of care.

(16) The agency does not count interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998.

(17) The agency deems income, unearned and earned, from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(18) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(19) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(20) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, only the amount paid to the individual is counted as income.

**R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.**

(1) This rule establishes how the Department treats unearned income for the Medicaid Work Incentive program.

(2) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 2004 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2003. The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The Department allows the provisions found in R414-304-2 (4) through (13), and (16) through (20).

(4) The agency determines income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(5) For the Medicaid Work Incentive Program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors are eligible without paying a Medicaid buy-in premium.

(6) The agency determines household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, the agency counts only the income of the individual. The agency includes in the household size, any dependent children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the net income is compared to 250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, the agency combines their income before allowing any deductions. The agency includes in the household size the spouse and any children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. The agency compares the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, the agency combines the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. The agency includes in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. The agency compares the net income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

**R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.**

(1) This rule establishes how the Department treatsunearned income to determine eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(2) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2004 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), and 233.20(a)(4)(ii), 2004 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 2003, which is incorporated by reference. The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3) The term "unearned income" means cash received for which the individual performs no service.

(4) The agency does not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(5) The agency does not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(6) The agency does not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(7) The agency does not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(8) The agency does not count as income the amount deducted from benefit income that is to repay an overpayment of such benefit income.

(9) The agency does not count as income the value of special circumstance items paid for by donors.

(10) The agency does not count as income home energy assistance.

(11) The agency does not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the agency only counts the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(12) The agency does not count as income SSA reimbursements of Medicare premiums.

(13) The agency does not count as income payments from the Department of Workforce Services under the Family

Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for Medicaid, the agency counts income used to determine the amount of these payments, unless the income is an excluded income under other laws or regulations.

(14) The agency does not count as income the interest accrued on an Individual Development Account as defined in 42 U.S.C. 604(h).

(15) The agency does not count as income interest or dividends earned on countable resources. The agency does not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(16) The agency does not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(17) The agency counts as income SSI and State Supplemental payments received by children who are included in the coverage under Child, Family, Newborn, or Newborn Plus Medicaid.

(18) The agency counts unearned rental income. The agency deducts $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the agency deducts the greater of either $30 or the following actual expenses that the client can verify.

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and,

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(19) The agency counts deferred income when it is received by the client if it was not deferred by choice and receipt can be reasonably anticipated. If the income was deferred by choice, it counts as income when it could have been received. The amount deducted from income to pay for benefits like health insurance, medical expenses or child care counts as income in the month the income could have been received.

(20) The agency counts the amount deducted from income that is to pay an obligation such as child support, alimony or debts in the month the income could have been received.

(21) The agency counts payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(22) The agency only counts as income the portion of a Veterans Administration check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent has applied to VA to receive the payment directly, VA has denied that request, and the dependent does not receive the payment. In this case, the amount for a dependent counts as income of the veteran or surviving spouse who receives the payment.

(23) The agency counts as income deposits to financial accounts jointly owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the agency does not count those funds as income. The agency may require the client to terminate access to the jointly held accounts.

(24) The agency counts as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(25) The agency counts current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. If the Office of Recovery Services is collecting current child support, it is counted as current even if the Office of Recovery Services mails the payment to the client after the month it is collected.

(26) The agency counts payments from annuities as unearned income in the month the payment is received.

(27) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the agency only counts the amount paid to the individual.

(28) The agency deems both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(29) The agency stops deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(30) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

**R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.**

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1110 through 416.1112, 2002 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 2001, which is incorporated by reference.

(2) If an SSI recipient has a plan for achieving self-support approved by the Social Security Administration, the Department shall not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent

flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) No deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

(12) Deductions from earned income such as insurance premiums, savings, garnishments or deferred income is counted in the month when it could have been received.

**R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.**

This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2003 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time-period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws.

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in a job placement under the federal Workforce Information Act (WIA).

(4) For Family Medicaid, the AFDC $30 and 1/3 of earned income deduction is allowed if the wage earner has received 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) The Department determines countable net income from self-employment by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verfication of actual business expenses greater than the 40 percent flat rate exclusion amount, the Department allows actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per month per child under age 2 and $175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to $160.00 per month per child under age 2 and $140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers is excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household is eligible for 1931 Family Medicaid. No health insurance premiums or medical bills are deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

**R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.**

(1) This section sets forth income deductions for non-institutional aged, blind, disabled and family Medicaid programs, except for the Medicaid Work Incentive program.

(2) The Department applies the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, 2005 ed., which are incorporated by reference. Any additional income deductions or limitations are described in this rule.

(3) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in

42 CFR 435.320, .322 and .324, the Department deducts from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(4) To determine eligibility for and the amount of a spenddown under medically needy programs, the Department deducts from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The Department also deducts from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2005 ed., except no deduction is allowed for Medicare premiums the Department pays for or reimburses to recipients.

(a) The Department deducts the entire payment in the month it is due and does not prorate the amount.

(b) The Department does not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(5) To determine the spenddown under medically needy programs, the Department deducts from income health insurance premiums the client or a financially responsible family member paid in the application month or during the three month retroactive period. The deduction is allowed either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(6) To determine eligibility for medically needy coverage groups, the Department deducts from income medically necessary medical expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client or a dependent sibling of a dependent client, a deceased spouse or a deceased dependent child.

(b) The medical bill will not be paid by Medicaid and is not payable by a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three-month time-period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter if the client still owes the provider for the service. Bills for services received and paid during the application month or the three-month time-period preceding the date of application can be used as deductions only through the month of application.

(7) A medical expense cannot be allowed as a deduction more than once.

(8) A medical expense allowed as a deduction must be for a medically necessary service. The Department decides if services are medically necessary.

(9) The Department deducts medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the Department deducts paid expenses before unpaid expenses.

(10) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the State Medicaid Plan.

(b) The expense must be for a service received during the benefit month.

(c) The Department will not refund any portion of any medical expense the client uses to meet a Medicaid spenddown because the client assumes responsibility to pay any expenses used to meet a spenddown.

(d) A refund cannot exceed the actual cash spenddown amount paid by the client.

(e) The Department does not refund spenddown amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The unpaid bills may be used to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent such bills remain unpaid at the beginning of such future month.

(f) The Department will reduce a refund by the amount of any unpaid obligation the client owes the Department.

(11) For poverty-related medical assistance, an individual or household is ineligible if countable income exceeds the applicable income limit. Medical costs cannot be deducted from income to determine eligibility for poverty-related medical assistance programs. Individuals cannot pay the difference between countable income and the applicable income limit to become eligible for poverty-related medical assistance programs.

(12) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the agency told the client that the Medicaid provider cannot use the provider's funds to pay the client's spenddown and that the provider cannot loan the client money for the client to pay the spenddown.

(13) A client may meet the spenddown by paying the agency the amount with cash or check, or by providing proof to the agency of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services received in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses cannot be payable by Medicaid or a third party.

(d) For each benefit month, the client can choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the agency or by presenting a cash or check payment to the agency equal to the spenddown amount.

(14) The Department cannot accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. The Department cannot accept spenddown payments from a client if the funds were loaned to the client by a Medicaid provider.

(15) The Department deducts only the amount of pre-paid medical expenses that equals the cost of services actually received in the month such expenses are paid. Payments a client makes for medical services in a month before the month services are actually received cannot be deducted from income.

(16) For non-institutional Medicaid programs, the Department deducts institutional medical expenses the client owes only if the expenses are medically necessary. The Department decides if services for institutional care are medically necessary.

(17) The Department does not require a client to pay a spenddown of less than $1.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown only if the services were not provided by the Medicaid-contracted, mental health provider.

**R414-304-8. Medicaid Work Incentive Program Income Deductions.**

(1) This section sets forth income deductions for the Medicaid Work Incentive (MWI) program.

(2) To determine eligibility for the MWI program, the Department deducts the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the Department deducts the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one half of the remaining earned income;

(d) A current-year loss from a self-employment business can be deducted only from other earned income.

(3) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs are not deducted from income before comparing countable income to the applicable limit.

(4) The Department deducts from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(5) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the Department. The MWI premium cannot be met with medical expenses.

(6) The Department does not require a client to pay a MWI buy-in premium of less than $1.

**R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.**

(1) This section sets forth income deductions for aged, blind, disabled and family institutional Medicaid programs.

(2) The Department applies the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, 2005 ed., which are incorporated by reference. The Department applies Subsection 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, which are incorporated by reference. Any additional income deductions or limitations are described in this rule.

(3) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(4) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department deducts from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums are deducted in the month due. The payment is not pro-rated. The Department deducts the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums the Department pays for or reimburses to recipients.

(b) The Department deducts from income the portion of a combined premium, attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(5) The Department deducts medical expenses from income only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill will not be paid by Medicaid or by a third party;

(c) a paid medical bill can be deducted only through the month it is paid. No portion of any paid bill can be deducted after the month of payment.

(6) The Department does not deduct medical or remedial care expenses that the Department is prohibited from paying because the expenses are incurred during a penalty period imposed due to a transfer of assets for less than fair market value. The Department does not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 6014 of Pub. L. 109-171 because the equity value of the individual's home exceeds the limit set by such law. The Department will not deduct such expenses during the month the services are received nor for any month after the month services are received even when such expenses remain unpaid.

(7) The Department does not allow a medical expense as an income deduction more than once.

(8) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health decides if services are medically necessary.

(9) The Department deducts only the amount of pre-paid medical expenses that equals the cost of services actually received in the month such expenses are paid. Payments a client makes for medical services in a month before the month the services are actually received cannot be deducted from income.

(10) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the agency told the client that the Medicaid provider cannot use the provider's funds to pay the client's spenddown and that the provider cannot loan the client money for the client to pay the spenddown.

(11) A client may meet the spenddown by paying the agency the amount with cash or check, or by providing to the agency proof of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services received in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses cannot be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to

change the method of meeting spenddown by either presenting proof of allowable medical expenses to the agency or by presenting a cash or check payment to the agency equal to the spenddown amount.

(12) The Department cannot accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. The Department cannot accept spenddown payments from a client if the funds were loaned to the client by a Medicaid provider.

(13) Institutionalized clients are required to pay all countable income remaining after allowable income deductions to the institution in which they reside as their contribution to the cost of their care.

(14) A client who pays a cash spenddown, or a liability amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or liability paid up to the amount of bills paid by the client. The following criteria applies:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the State Medicaid Plan.

(b) The expense must be for a service received during the benefit month.

(c) The Department will not refund any portion of any medical expense the client uses to meet a Medicaid spenddown or to reduce the liability owed to the institution because the client assumes responsibility to pay any expenses used to meet a spenddown or reduce a liability.

(d) A refund cannot exceed the actual cash spenddown or liability amount paid by the client.

(e) The Department does not refund spenddown or liability amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The unpaid bills may be used to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent such bills remain unpaid at the beginning of such future month.

(f) The Department reduces a refund by the amount of any unpaid obligation the client owes the Department.

(15) The Department deducts a personal needs allowance for residents of medical institutions equal to $45.

(16) When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department deducts a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(6), for up to six months to maintain the individual's community residence.

(17) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver is eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized. The Department applies the provisions of Section 1924(d) of the Compilation of Social Security Laws, or the provisions of 42 U.S.C. 435.726 or 435.832 to determine the deduction for a spouse and family members.

(18) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(19) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown only if the services were not provided by the Medicaid-contracted, mental health provider.

**R414-304-10. Budgeting.**

(1) The Department adopts 42 CFR 435.601 and 435.640, 2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" include any change in the source of income and any change that causes income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI-1, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any

amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period. Income will not be factored for retroactive months.

**R414-304-11. Income Standards.**

(1) This rule sets forth the income standards the Department uses to determine eligibility for Medicaid coverage groups.

(2) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2003, which are incorporated by reference.

(3) The Department calculates the Aged and Disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of the Medicaid Work Incentive program apply.

(4) The income standard for the Medicaid Work Incentive Program (MWI)for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

(a) The Department charges a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the Department charges a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(5) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

(6) The current Medicaid Income Standards (BMS) are as follows:

TABLE

| Household Size | Medicaid Income Standard (BMS) |
|---|---|
| 1 | 382 |
| 2 | 468 |
| 3 | 583 |
| 4 | 683 |
| 5 | 777 |
| 6 | 857 |
| 7 | 897 |
| 8 | 938 |
| 9 | 982 |
| 10 | 1,023 |
| 11 | 1,066 |
| 12 | 1,108 |
| 13 | 1,150 |
| 14 | 1,192 |
| 15 | 1,236 |
| 16 | 1,277 |
| 17 | 1,320 |
| 18 | 1,364 |

**R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.**

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the 100% of poverty A or D Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI-1 case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18;

(e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

**R414-304-13. Family Medicaid Filing Unit.**

This section provides criteria governing who is included in a family Medicaid household.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) For Family Medicaid programs, if a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the Department includes the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members do not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers only emergency services under other provisions of Medicaid law.

(3) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group, and an ineligible alien child may be excluded from the household size, at the request of the specified relative responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size for deciding what income limit is applicable to the family. Income and resources of an excluded child are not considered when determining eligibility or spenddown.

(4) The Department does not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent is not counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(5) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child is included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children are included in the household size.

(6) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents are included in the household size.

(7) Parents who have relinquished their parental rights shall not be included in the household size.

(8) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(9) If a person is "included" or "counted" in the household size, it means that that family member is counted as part of the household and his or her income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level applies to determine eligibility for the client or family.

**R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.**

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

**KEY: financial disclosures, income, budgeting**
**January 28, 2008 26-18-1**
**Notice of Continuation January 25, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-305. Resources.**
**R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.**

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

(2) To determine eligibility of the aged, blind or disabled, the Department adopts 42 CFR 435.725 and 435.726, 435.840 through 435.845, 2005 ed., and 20 CFR 416.1201 through 416.1202 and 416.1204 through 416.1266, 2005 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), 404(h)(4) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 1999, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two- member household.

(6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2005 ed.

(8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is countable.

(9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(10) Lump sum 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 and the purchase is completed within 90 days. The individual shall receive one extension of 90 days if more than 90 days is needed to complete the actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(13) For an institutionalized individual, a home or life estate is not considered an exempt resource.

(14) The Department excludes an institutionalized individual's principal home or life estate from countable resources if the individual's equity in the home or life estate does not exceed the equity limit established in Section 6014 of Pub. L. 109-171, and one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(15) For A, B and D Medicaid, the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(16) A previously unreported resource may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. However, it cannot be exempted retroactively prior to November 1982 or earlier than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(17) One vehicle is exempt if it is used at least four times per calendar year to obtain necessary medical treatment.

(18) The Department allows SSI recipients who have a plan for achieving self support approved by the Social Security Administration to set aside resources that allow them to purchase work-related equipment or meet self support goals. These resources are excluded.

(19) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(20) Business resources required for employment or self-employment are not counted.

(21) For the Medicaid Work Incentive Program, the Department excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(22) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(21) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(23) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(24) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(25) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

| Age | Life Estate Figure |
|---|---|
| 0 | .97188 |
| 1 | .98988 |
| 2 | .99017 |
| 3 | .99008 |
| 4 | .98981 |
| 5 | .98938 |
| 6 | .98884 |
| 7 | .98822 |
| 8 | .98748 |
| 9 | .98663 |
| 10 | .98565 |
| 11 | .98453 |
| 12 | .98329 |
| 13 | .98198 |
| 14 | .98066 |
| 15 | .97937 |
| 16 | .97815 |
| 17 | .97700 |
| 18 | .97590 |
| 19 | .97480 |
| 20 | .97365 |
| 21 | .97245 |
| 22 | .97120 |
| 23 | .96986 |
| 24 | .96841 |
| 25 | .96678 |
| 26 | .96495 |
| 27 | .96290 |
| 28 | .96062 |
| 29 | .95813 |
| 30 | .95543 |
| 31 | .95254 |
| 32 | .94942 |
| 33 | .94608 |
| 34 | .94250 |
| 35 | .93868 |
| 36 | .93460 |
| 37 | .93026 |
| 38 | .92567 |
| 39 | .92083 |
| 40 | .91571 |
| 41 | .91030 |
| 42 | .90457 |
| 43 | .89855 |
| 44 | .89221 |
| 45 | .88558 |
| 46 | .87863 |
| 47 | .87137 |
| 48 | .86374 |
| 49 | .85578 |
| 50 | .84743 |
| 51 | .83674 |
| 52 | .82969 |
| 53 | .82028 |
| 54 | .81054 |
| 55 | .80046 |
| 56 | .79006 |
| 57 | .77931 |
| 58 | .76822 |
| 59 | .75675 |
| 60 | .74491 |
| 61 | .73267 |
| 62 | .72002 |
| 63 | .70696 |
| 64 | .69352 |
| 65 | .67970 |
| 66 | .66551 |
| 67 | .65098 |
| 68 | .63610 |
| 69 | .62086 |
| 70 | .60522 |
| 71 | .58914 |
| 72 | .57261 |
| 73 | .55571 |
| 74 | .53862 |
| 75 | .52149 |
| 76 | .50441 |
| 77 | .48742 |
| 78 | .47049 |
| 79 | .45357 |
| 80 | .43659 |
| 81 | .41967 |
| 82 | .40295 |
| 83 | .38642 |
| 84 | .36998 |
| 85 | .35359 |
| 86 | .33764 |
| 87 | .32262 |
| 88 | .30859 |
| 89 | .29526 |
| 90 | .28221 |
| 91 | .26955 |
| 92 | .25771 |
| 93 | .24692 |
| 94 | .23728 |
| 95 | .22887 |
| 96 | .22181 |
| 97 | .21550 |
| 98 | .21000 |
| 99 | .20486 |
| 100 | .19975 |
| 101 | .19532 |
| 102 | .19054 |
| 103 | .18437 |
| 104 | .17856 |
| 105 | .16962 |
| 106 | .15488 |
| 107 | .13409 |
| 108 | .10068 |
| 109 | .04545 |

**R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.**

(1) This section establishes the standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.

(2) The Department adopts 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4) and (6), and 233.20(a)(3)(vi)(A), 2004 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), Subsection 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2003, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department does not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law,

the applicable federal law governs over the inconsistent rule provision.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2003, the resource limit is $2,000 for a one person household, $3,000 for a two person household and $25 for each additional household member. For pregnant women defined above, the resource limit is defined in R414-303-11.

(5) Except for the exclusion for a vehicle, the agency uses the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(6) To determine countable resources for Medicaid eligibility, the agency considers all available resources owned by the client. The agency does not consider a resource unavailable based upon the client's intent to or action of disposing of non-liquid resources.

(7) The agency counts resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(8) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an applicant or recipient, the agency counts the resources as the applicant's or recipient's. The arrangement may be formal or informal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, the agency does not count the resource until it can be made available. Before an applicant can be made eligible, or to continue eligibility for a recipient, the applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Except for determining countable resources for 1931 Family Medicaid, the agency excludes a maximum of $1,500 in equity value of one vehicle.

(11) The agency does not count as resources the value of household goods and personal belongings that are essential for day-to-day living. Any single household good or personal belonging with a value that exceeds $1000 must be counted toward the resource limit. The agency does not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(12) The agency does not count the value of one wedding ring and one engagement ring as a resource.

(13) For a non-institutionalized individual, the agency does not count the value of a life estate as an available resource if the life estate is the applicant's or recipient's principal residence. If the life estate is not the principal residence, the rule in Subsection R414-305-1(25) applies.

(14) The agency does not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(15) For a non-institutionalized individual, the agency does not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency counts as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of R414-305-1(13), (14) and (25) apply to the individual's home or life estate. In addition, the provisions of section 6014 of Pub. L. 109-171 apply.

(16) The agency does not count as a resource the value of water rights attached to an excluded home and lot.

(17) The agency does not count any resource, or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency counts as a resource any money from such a resource that is given to the child as unearned income and retained beyond the month received.

(18) Lump sum 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 and the purchase is completed within 90 days. The individual shall receive one extension of 90 days, if more than 90 days is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(19) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted as a resource for the first 9 months after receipt.

(20) The agency excludes from resources, a burial and funeral fund or funeral arrangement up to $1500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. All such funds must be separated from non-burial funds and clearly designated as burial funds. Interest earned on exempt burial funds and left to accumulate does not count as a resource. If exempt burial funds are used for some other purpose, remaining funds will be counted as an available resource as of the date funds are withdrawn.

(21) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(22) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(23) Business resources required for employment or self employment are not counted.

(24) For 1931 Family Medicaid households, the agency will not count as a resource either the equity value of one vehicle that meets the definition of a "passenger vehicle" as defined in 26-18-2(6), or $1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(25) For eligibility under Family-related Medicaid programs, the agency will not count as a resource retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(26) The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit for nine months following the month received. Any remaining funds will count as a resource in the 10th month after being received.

**R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.**

(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.

(2) To determine the countable resources of an institutionalized individual who has a community spouse, the

Department adopts Section 1924(a), (c) and (f) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts section 6013 of Pub. L. 109-171 which is incorporated by reference. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The resource limit for an institutionalized individual is $2,000.

(4) If a client is otherwise eligible for institutional Medicaid, but is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, the client may obtain institutional Medicaid by assigning support rights to the State of Utah.

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client assigns support rights to the State.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The agency will determine the client's eligibility for institutional Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client meets the undue hardship criteria including assigning support rights to the State.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1999.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, lasting until the time of the next regularly scheduled eligibility redetermination is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client to determine the countable resources of the institutionalized client.

**R414-305-4. Medicaid Qualifying Trusts.**

The Department adopts Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.

**R414-305-5. Transfer of Resources for A, B and D Medicaid and Family Medicaid.**

There is no sanction for the transfer of resources.

**R414-305-6. Transfer of Resources for Institutional Medicaid.**

(1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.

(2) The Department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts sections 6011, 6012, and 6016 of Pub. L. 109-171 which are incorporated by reference. In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) If an individual or the individual's spouse transfers the home or life estate, the transfer requirements of Section 1917(c) of the Compilation of the Social Security Act apply.

(4) If an individual or the individual's spouse transfers assets in more than one month on or after February 8, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the sanction period. The Department applies partial month sanctions for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(5) If assets are transferred during any sanction period, the sanction period for those transfers will not begin until the previous sanction has expired.

(6) If a transfer occurs after an individual has been approved for Medicaid for nursing home or home and community based services, the sanction begins on the first day of the month after the month the asset is transferred.

(7) The average private-pay rate for nursing home care in Utah is $4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, January 1, 1999 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

(9) No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a) Up to $7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed $7,000.

(b) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c) Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

(10) If the agency determines that a sanction period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the individual is ineligible for nursing home or other long-term care services because of the sanction. The notice shall include when the sanction period begins and ends. The individual may request a waiver of the sanction period based on undue hardship. The individual must send a written request to the agency within 30 days after the mailing date of the sanction notice.

(11) Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

(a) The client or the person who transferred the resources has exhausted all reasonable means including legal remedies to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It is unreasonable to require the client to take action more costly than the value of the resource, and

(b) Application of the sanction for a transfer of resources would deprive the client of medical care such that the client's life or health would be endangered, or would deprive the client

of food, clothing, shelter or other necessities of life.

(12) The Department bases its decision that undue hardship exists upon the client's medical condition and the financial situation of the client. The Department will consider income and resources of the client, client's spouse, and parents of an unemancipated client to decide if the financial situation creates undue hardship. The agency shall send a written notice of its decision on the undue hardship request. The client has 90 days from the date of mailing of the decision concerning the request for an undue hardship waiver to request a fair hearing.

(13) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R414-305-1(3)(a), shall be deducted from such burial trust first before determining the amount transferred.

(14) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively so that they do not overlap. If a resource was transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends.

**R414-305-7. Home and Community-Based Services Waiver Resource Provisions.**

(1) The resource limit is $2,000.

(2) Following the initial month of eligibility, continued eligibility is determined by counting only the resources that belong to the client.

(3) For married clients, spousal impoverishment resource rules apply as defined in R414-305-3.

**R414-305-8. QMB, SLMB, and QI Resource Provisions.**

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1999 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI resource limit is $4,000 for an individual and $6,000 for a couple.

**KEY: Medicaid**
**July 25, 2006** **26-18**
**Notice of Continuation January 31, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-306. Program Benefits.**
**R414-306-1. Medicaid Benefits.**

(1) The Department adopts 42 CFR 440.240, 441.56, and 431.625, 1999 ed., which are incorporated by reference.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department is responsible for defining emergency services which will be paid for by Medicaid for aliens who do not meet citizenship requirements for full Medicaid coverage. Emergency services include medical services given to prevent death or permanent disability. Emergency services do not include prenatal or postpartum services, prolonged medical support, long term care, or organ transplants. Prior authorization is required if the client applies for medical assistance before receiving medical services.

(4) Workers must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

**R414-306-2. QMB, SLMB, and QI-1 Benefits.**

(1) The Department adopts Subsection 1905(p) and Section 1933 of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

**R414-306-3. QMB and SLMB Date of Entitlement.**

The Department adopts Subsection 1902(e)(8) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

**R414-306-4. Effective Date of Eligibility.**

(1) The Department adopts 42 CFR 435.914, 2001 ed., which is incorporated by reference.

(2) Eligibility for any Medicaid program, or the SLMB or QI-1 program, shall begin no earlier than the date that is three months before the date of application for benefits. Coverage shall not be effective on the first day of a month if that date is more than three months before the application date. Coverage in the months before the application month cannot begin before the date the applicant met the eligibility criteria.

(a) Institutional Medicaid shall begin on the date that the Department receives verification of nursing home admission from the nursing home, but no earlier than the date that is three months before the date of application for nursing home services.

(b) Eligibility under a Home and Community Based (HCB) Services waiver shall begin on the date the client is determined to meet the level-of-care criteria and home and community based services are scheduled to begin within the month, but no earlier than the date that is three months before the date of application for HCB services.

(c) Eligibility for benefits as a Qualifying Individual-Group 1 can begin no earlier than the date that is three months before the date of application and in no case before January 1, 1998. An individual selected to receive QI-1 benefits in a month of the year is entitled to receive such assistance for the remainder of the calendar year if the individual continues to be a qualifying individual and the program still exists. Receipt of QI-1 benefits in one calendar year does not entitle the individual to continued assistance in any succeeding year.

(3) Eligibility in the application month and on-going months shall begin on the first day of such month, except for

(a) an individual who just moved to Utah, in which case the effective date of eligibility of such individual cannot be earlier than the date that the individual meets the state residency requirement defined in R414-302-2; and

(b) an individual who is a qualified alien subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute.

(c) an individual who is a qualified alien not subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date the individual's qualified alien status began.

(4) There is no provision for retroactive QMB assistance.

(5) After being approved for Medicaid, a client may request retroactive coverage based on the date of the approved application, but only if the client had not previously requested the retroactive coverage, and had either been denied for such time period or had failed to meet a spenddown for such time period. The recipient must provide verifications needed to establish eligibility for the retroactive period being requested.

**R414-306-5. Availability of Medical Services.**

(1) The Department adopts 42 CFR 431.52, 2001 ed., which is incorporated by reference.

(2) A person may receive medical services from an out-of-state provider if that provider accepts the Utah Medicaid reimbursement rate for the service.

(3) If a medical service requires prior approval for reimbursement in-state, the medical service will require prior approval if received out-of-state.

(4) If a person has a primary care provider, the person shall receive medical services from that provider, or obtain authorization from the primary care provider to receive medical services from another medical provider.

(5) If a person is enrolled in a Medicaid Health Plan, the person shall receive medical services from a provider within the Medicaid Health Plan's network, or obtain authorization from the Medicaid Health Plan or Utah Medicaid to receive medical services from an out-of-network medical provider.

**R414-306-6. Medical Transportation.**

(1) The Department adopts 42 CFR 431.53, 2001 ed., which is incorporated by reference.

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in subsection (13) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to

and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of $0.18 per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed $150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If two or more Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or $50.00 per night, whichever is less. Reimbursement for food costs shall be no more than $25 of the $50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in subsection (9). The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.

(b) Fees are established using the methodology as described in the State Plan, Attachment 4.19-B Section R, Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not

covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if parartransit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

**R414-306-7. State Supplemental Payments for Institutionalized SSI Recipients.**

(1) The Department adopts Subsection 1616(a) through (d) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

**KEY: program benefits, medical transportation**
**July 19, 2004 26-18**
**Notice of Continuation January 25, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-308. Application, Eligibility Determinations and Improper Medical Assistance.**
**R414-308-1. Authority and Purpose.**

(1) This rule is authorized by 26-18-3.

(2) This rule establishes requirements for medical assistance applications, eligibility decisions, eligibility period, verifications, change reporting, notification and improper medical assistance for the following programs:

(a) Medicaid;

(b) Qualified Medicare Beneficiaries;

(c) Specified Low-Income Medicare Beneficiaries; and

(d) Qualified Individuals.

**R414-308-2. Definitions.**

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition, the following definitions apply.

(a) "Cost-of-care" means the amount of income an institutionalized individual must pay to the medical facility for long-term care services based on the individual's income and allowed deductions.

(b) "Re-certification" means the process of periodically determining that an individual or household continues to be eligible for medical assistance.

**R414-308-3. Application and Signature.**

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for Medicaid, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, or Qualified Individuals assistance and delivering it to the agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) For on-line applications, the individual must either send the agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The agency may assign someone to act as the authorized representative when the individual requires help to apply and is unable to appoint a representative.

(2) The date of application is determined as follows:

(a) The application date is the date the agency receives a completed, signed application at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the Internet.

(b) If a local office receives an application after 5:00 p.m. of a business day, the date of application is the next business day.

(c) The application date for applications delivered to an outreach location is as follows:

(i) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(ii) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from that location.

(d) The due date for verifications needed to complete an application and determine eligibility is 5:00 p.m. on the last day of the application period.

(3) The agency accepts a signed application sent via facsimile as a valid application and does not require it to be signed again.

(4) If an applicant submits an unsigned, completed application form to the agency, the agency will notify the applicant that he or she must sign the application within 30 days of the application date. The agency will send a signature page to the applicant within 10 days for the client to sign and return.

(a) If the agency receives a signature page signed by the applicant within 30 days of receiving the completed application, the original application date is retained.

(b) If the agency does not receive a signed signature page within 30 days of when it received the completed application, the application is void and the agency will send a denial notice to the applicant. The previous application date will not be protected.

(c) If the agency receives a signed signature page during the 30 days immediately after the denial notice is mailed, the agency will contact the applicant to ask if the applicant wants to reapply for medical assistance. If the applicant wants to reapply, the agency may use the previous completed application form, but the application date will be the date the agency received the signed signature page according to the same provisions in R414-308-3(2).

(d) If the agency receives a signed signature page more than 30 days after the denial notice is sent, the applicant will need to reapply. The original application date is not retained.

(5) If an application is not complete, but it is signed by the applicant, the eligibility worker will ask the applicant to complete the application. If the client completes the application within 30 days of the date the agency received the application, the agency will determine eligibility based on the original application date. If the client does not complete the application within 30 days, the original application date is not retained and the agency denies the application.

**R414-308-4. Verification of Eligibility and Information Exchange.**

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

(a) The agency will provide the client a written request of the needed verifications.

(b) The client has at least 10 calendar days from the date the agency gives or mails the verification request to the client to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the client, but not less than 10 calendar days from the date such request is given to or mailed to the client.

(d) The agency allows additional time to provide verifications if the client requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the client asks for more time to provide the verifications, forms or information.

(e) If a client has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, the agency denies the application, re-certification, or ends eligibility.

(f) If the agency receives all necessary verifications during the 30 days after denying an application for lack of verifications, the date the agency receives all the verifications is the new application date. If the agency receives verifications more than 30 days after the application has been denied, the client will need to reapply for medical assistance.

(2) The agency must receive verification of an individual's income, both unearned and earned. To be eligible under Section 1902(a)(10)(A)(ii)(XIII), the Medicaid Work Incentive program, the agency may require proof such as paycheck stubs showing deductions of FICA tax; self-employment tax filing documents; or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

**R414-308-5. Eligibility Decisions or Withdrawal of an Application.**

(1) The agency decides the applicant's eligibility within the time limits established in 42 CFR 435.911 and 435.912, 2006 ed., which are incorporated by reference.

(2) The agency extends the time limit if the applicant asks for more time to provide requested information before the due date. The agency gives the applicant at least 10 more days after the original due date to provide verifications upon request of the applicant. The agency can allow a longer period of time for the client to provide verifications if the delay is due to circumstances beyond the client's control, an emergency, a client illness or a similar cause.

(3) An applicant may withdraw an application for medical assistance any time before the agency makes an eligibility decision on the application. An individual requesting an assessment of assets for a married couple under Section 1924 of the Social Security Act, 42 U.S.C. 1396r-5, may withdraw the request any time before the agency has completed the assessment.

**R414-308-6. Eligibility Period and Re-Certification.**

(1) The eligibility period begins on the effective date of eligibility as defined in R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a client must pay a spenddown, the agency completes the eligibility process and grants eligibility when the agency receives the required payment or proof of incurred medical expenses equal to the required payment for the month or months, including partial months, for which the client wants medical assistance.

(b) If a client must pay a Medicaid Work Incentive premium, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the month or months, including partial months, for which the client wants medical assistance.

(c) If a client must pay an asset co-payment for prenatal coverage, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the period of prenatal coverage.

(d) The client must make the payment or provide proof of medical expenses, if applicable, within 30 days from the mailing date of the notice that tells the client the amount owed.

(e) For ongoing months of eligibility, the client has until 5:00 p.m. of the 10th day of the month after the benefit month to meet the spenddown or pay the Medicaid Work incentive premium. If the 10th day of the month is a weekend or holiday, the client has until 5:00 p.m. on the first business day after the 10th to meet the spenddown or pay the premium.

(f) Residents who reside in a long-term care facility and who owe a cost-of-care contribution to the medical facility must pay the medical facility directly. The resident may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in R414-304-9. The resident must pay any cost-of-care contribution not met with allowable medical bills to the medical facility. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount the client owes the facility.

(g) No eligibility exists in a month for which the client fails to meet a required spenddown or fails to pay a required Medicaid Work Incentive premium. Eligibility for the Prenatal program does not exist when the client fails to pay a required asset co-payment for the Prenatal program.

(2) The eligibility period ends on:

(a) the last day of the re-certification month;

(b) the last day of the month in which the recipient asks the agency to discontinue eligibility;

(c) the last day of the month the agency determines the individual is no longer eligible;

(d) for the Prenatal program, the last day of the month that is at least 60 days after the date the pregnancy ends, except that for Prenatal coverage for emergency services only, eligibility ends the last day of the month in which the pregnancy ends; or

(e) the date the individual dies.

(3) Recipients must re-certify eligibility for medical assistance at least once every 12 months. The agency may require recipients to re-certify eligibility more frequently when the agency:

(a) receives information about changes in a recipient's circumstances that may affect the recipient's eligibility;

(b) has information about anticipated changes in a recipient's circumstances that may affect eligibility; or

(c) knows the recipient has fluctuating income.

(4) To receive medical assistance without interruption, a recipient must complete the re-certification process by 5:00 p.m. on the date printed on the re-certification form. The client must also provide verifications by the due date specified by the agency and must continue to meet all eligibility criteria, including meeting a spenddown or paying a Medicaid Work Incentive premium if one is owed.

(a) If the recipient does not complete the re-certification process on time, eligibility ends on the last day of the re-certification month.

(b) If the recipient does not complete the re-certification process on time, but completes the recertification including providing verifications by 5:00 p.m. on the last business day of the month after the review month, the agency will determine whether the recipient continues to meet all eligibility criteria.

(i) The agency will reinstate benefits effective the beginning of the month after the re-certification month if the recipient continues to meet all eligibility criteria and meets any spenddown or pays the Medicaid Work Incentive premium, if applicable, within 30 days. Otherwise, the recipient remains ineligible for medical assistance.

(ii) If the recipient does not complete the re-certification process before 5:00 p.m. of the last business day of the month following the re-certification month, eligibility will not be reinstated. The recipient will have to reapply for medical assistance.

(c) If the recipient does not meet the spenddown or pay the Medicaid Work Incentive premium on time, then eligibility ends effective the last day of the re-certification month and the

recipient will have to reapply.

(5) For individuals selected for coverage under the Qualified Individuals Program, eligibility extends through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

**R414-308-7. Change Reporting and Benefit Changes.**

(1) A client must report to the agency reportable changes in the client's circumstances. Reportable changes are defined in R414-301-2.

(a) The due date for reporting changes is 5:00 p.m. on the 10th calendar day after the client learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income the client receives, the due date for reporting the income change is 5:00 p.m. on the day that is ten calendar days after the date the client receives such income.

(c) The due date for providing verifications of changes is 5:00 p.m. on the date the agency sets as the due date in a written notice to the client.

(2) The agency may receive information from credible sources other than the client such as computer income matches, and from anonymous citizen reports. If the agency receives information from sources other than the client that may affect the client's eligibility, the agency will verify the information as needed depending on the source of information before using the information to change the client's eligibility for medical assistance. Information from citizen reports must always be verified by other reliable proofs.

(3) The date of report is the date the client reports the change to the agency by 5:00 p.m. on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source.

(4) If the agency needs verification of the reported change from the client, the agency requests it in writing and provides at least ten calendar days for the client to respond.

(5) A client who provides change reports, forms or verifications by 5:00 p.m. on the due date has provided the information on time.

(6)(a) If the reported information causes an increase in a client's benefits and the agency requests verification, the increase in benefits is effective the first day of the month following:

(i) the date of the report if the agency receives verifications within ten days of the request; or

(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.

(b) The agency cannot increase benefits if the agency does not receive requested verifications.

(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:

(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.

(b) If the agency does not have sufficient information to adjust benefits, the agency requests verifications from the client. The due date is at least 10 days from the date of the request.

(i) Upon receiving the verifications, the agency adjusts benefits effective the first day of the month following the month in which the agency can send proper notice.

(ii) If the verifications are not returned on time, the agency discontinues benefits for the affected individuals effective the end of the month in which the agency can send proper notice.

(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.

(9) If a client fails to timely report a change or return verifications or forms by the due date, the client must repay all services and benefits paid by the Department for which the client was ineligible.

(10) If a due date falls on a weekend or holiday, the due date will be 5:00 p.m. on the first business day immediately after the due date.

(11) Notwithstanding the provisions of subsections (6) and (7), changes affecting an institutionalized client's eligibility are effective as of the date of the change.

**R414-308-8. Case Closure and Redetermination.**

(1) The agency terminates medical assistance upon recipient request or if the agency determines the recipient is no longer eligible.

(2) To maintain ongoing eligibility, a recipient must complete the re-certification process as provided in R414-308-6. Failure to complete the re-certification process makes the recipient ineligible.

(3) Before terminating a recipient's medical assistance, the agency will decide if the client is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost-Sharing programs, the Primary Care Network and the UPP program. Children will be referred to the Children's Health Insurance Program when applicable.

(a) The agency does not require a recipient to complete a new application, but may request more information from the recipient to complete the redetermination for other medical assistance programs. If the recipient does not provide the necessary information, the recipient's medical assistance ends.

(b) When redetermining eligibility for other programs, the agency cannot enroll an individual in a medical assistance program that is not in an open enrollment period, unless that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollments are stopped. An open enrollment period is a time when the agency accepts applications. Open enrollment applies only to the Primary Care Network, the UPP Program and the Children's Health Insurance Program.

**R414-308-9. Improper Medical Coverage.**

(1) As used in this section, services and benefits include all amounts the Department pays on behalf of the client during the period in question and includes premiums paid to any Medicaid health plans or managed care plans, Medicare, and private insurance plans; payments for prepaid mental health services; and payments made directly to service providers or to the client.

(2) A client must repay the cost of services and benefits the client receives for which the client is not eligible.

(a) If the agency determines a client was ineligible for the services or benefits received, the client must repay the Department the amount the Department paid for the services or benefits. The amount the client must repay will be reduced by the amount the client paid the agency for a Medicaid spenddown or a Medicaid Work Incentive premium for the month. If a woman who has paid an asset co-payment for coverage under Prenatal Medicaid is found to have been ineligible for the entire period of coverage under Prenatal Medicaid, the amount she must repay will be reduced by the amount she paid the agency in the form of the Prenatal asset co-payment, if applicable.

(b) If the client is eligible but the overpayment was because the spenddown, the Medicaid Work Incentive premium, the asset co-payment for prenatal services, or the cost-of-care contribution was incorrect, the client must repay the difference between the correct amount the client should have paid and what the client actually paid.

(3) A client may request a refund from the Department for

any month in which the client believes that

(a) the spenddown, asset co-payment for prenatal services, or cost-of-care contribution the client paid to receive medical assistance is less than what the Department paid for medical services and benefits for the client, or

(b) the amount the client paid in the form of a spenddown, a Medicaid Work Incentive premium, a cost-of-care contribution for long-term care services, or an asset co-payment for prenatal services was more than it should have been.

(4) Upon receiving the request for a refund, the Department will determine if the client is owed a refund.

(a) In the case of an incorrect calculation of a spenddown, Medicare Work Incentive premium, cost-of-care contribution or asset co-payment for prenatal services, the refundable amount is the difference between the incorrect amount the client paid the Department for medical assistance and the correct amount that the client should have paid, less the amount the client owes the Department for any other past due, unpaid claims.

(b) In the case when the spenddown, asset co-payment for prenatal services or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown, asset co-payment or cost-of-care contribution the client paid for medical assistance and the actual amount the Department paid on behalf of the client for services and benefits, less the amount the client owes the Department for any other past due, unpaid claims. The Department issues the refund only after the 12-month time-period that medical providers have to submit claims for payment.

(c) The agency does not issue a cash refund for any portion of a spenddown or cost-of-care contribution that was met with medical bills.

(5) A client who pays a premium for the Medicaid Work Incentive program cannot receive a refund even if the services paid by the Department are less than the premium the client pays.

(6) If the cost-of-care contribution a client pays a medical facility is more than the Medicaid daily rate for the number of days the client was in the medical facility, the client can request a refund from the medical facility. The Department will refund the amount owed the client only if the medical facility has sent the excess cost-of-care contribution to the Department.

(7) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department recovers the overpayment from both the alien and the sponsor.

**KEY: public assistance programs, application, eligibility, Medicaid**
**April 1, 2007 26-18**
**Notice of Continuation January 31, 2008**

**R477. Human Resource Management, Administration.**
**R477-8. Working Conditions.**
**R477-8-1. Work Period.**

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of Section R477-8-6.

(c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of the rules Section R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

(f) An employee must work in increments of 15 minutes or more to receive salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

**R477-8-2. Bus Passes.**

Agencies may participate in the purchase of bus passes for employees.

**R477-8-3. Telecommuting.**

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

**R477-8-4. Lunch and Break Periods.**

(1) Each full-time work day shall include a minimum of 30 minutes noncompensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day or longer lunch period. Any exceptions must be approved in writing by the Executive Director, DHRM.

**R477-8-5. Overtime.**

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31, 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accrual. Hours worked over two or more weeks shall not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by division and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) when an employee transfers to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime shall not be compensated with actual payment. Schedule AB employees shall not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(iii) have the power to arrest;

(iv) be POST certified or scheduled for POST training; and

(v) perform over 80 percent law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(i) 171 hours in a work period of 28 consecutive days; or

(ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(i) 212 hours in a work period of 28 consecutive days; or

(ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(i) the Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) the state's payroll period;

(iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) An FLSA nonexempt employee must complete and sign a state approved biweekly time record that accurately reflects the hours actually worked, including:

(i) approved and unapproved overtime;

(ii) on-call time;

(iii) stand-by time;

(iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(v) approved leave time.

(b) An employee who fails to accurately record time shall be disciplined.

(c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(d) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time record. All hours must be recorded in order to claim overtime. Completion of the time record is at agency discretion when no overtime is worked during the work period.

(e) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.

(f) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time;

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on-call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on-call status on his time sheet in order to be paid.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(9) Commuting and Travel Time for FLSA exempt and nonexempt employees:

(a) Normal commuting time from home to work and back shall not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

(i) paid off automatically in the same pay period accrued;

(ii) paid off at any time during the year as determined appropriate by a state agency or division;

(iii) all hours accrued above the limit set by DHRM; or

(iv) upon request of the employee and approval by the agency head.

**R477-8-6. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in Subsection R477-9-2(1).

**R477-8-7. Reasonable Accommodation.**

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

**R477-8-8. Fitness For Duty Evaluations.**

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

**R477-8-9. Temporary Transitional Assignment.**

Temporary transitional assignments may be part of any of the following:

(1) when an employee is unable to perform essential job functions due to temporary disability or medical restrictions;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(4) where there is a bona fide occupational qualification for retention in a position;

(5) as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

**R477-8-10. Change in Work Location.**

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; and

(b) the agency shall either pay to move the employee consistent with Section R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-03.03, or reimburse commuting expenses up to the cost of a move.

**R477-8-11. Agency Policies and Exemptions.**

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: breaks, telecommuting, overtime, dual employment**
**January 22, 2008 67-19-6**
**Notice of Continuation June 9, 2007 67-19-6.7**
**20A-3-103**

**R495. Human Services, Administration.**
**R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.**
**R495-861-1. Authority and Purpose.**

A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.

**R495-861-2. Requirements for Local Discretionary Social Services Block Grant Funds.**

A. Social Services Block Grant funds allocated to local governments by the Legislature are contracted to either counties or associations of government. These funds must be used to provide services to eligible persons as described in the Utah State Social Services Block Grant Plan. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds shall be allocated to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of $54,000.00.

2. Each area with less than 150,000 population will receive a base of $34,000.00.

3. The remainder of the money will be allocated based on the percentage each areas' population is of the state population.

C. Each local government shall be required to provide a 25 percent match for Discretionary Social Services Block Grant funds.

**KEY: social services, match requirement**
**January 30, 2008 62A-1-114**
**Notice of Continuation November 29, 2007**

**R527. Human Services, Recovery Services.**
**R527-39. Applicant/Recipient Cooperation.**
**R527-39-1. Definitions.**

1. IV-A recipient means any individual who has been determined eligible for financial assistance under title IV-A of the Social Security Act.

2. Non-IV-A Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Social Security Act but has not been determined eligible for, or is not receiving, financial assistance under title IV-A of the Social Security Act.

3. IV-A agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title IV-A of the Social Security Act.

4. Medicaid agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title XIX of the Social Security Act.

5. An applicant/recipient of IV-A or Non-IV-A Medicaid services, with some Medicaid program exceptions, must cooperate with the Office of Recovery Services/Child Support Services (ORS/CSS) in:

a. identifying and locating the parent of a child for whom aid is claimed;

b. establishing the paternity of a child born out of wedlock for whom aid is claimed;

c. establishing an order for child support;

d. obtaining support payments for the recipient and for a child for whom aid is claimed unless a Good Cause determination has been made by the IV-A or Medicaid agency, or the Non-IV-A Medicaid applicant/recipient has declined child support services;

e. obtaining any other payments or property due the recipient or the child; and

f. obtaining and enforcing the provisions of an order for medical support.

6. The applicant/recipient must cooperate with ORS/CSS with specific actions that are necessary for the achievement of the objectives listed above, as follows:

a. appearing at the ORS/CSS office to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;

b. participating at judicial or other hearings or proceedings;

c. providing information;

d. turning over to ORS/CSS any support payments received from the obligor after the Assignment of Collection of Support Payments has been made.

e. complying with a judicial or administrative order for genetic testing.

**R527-39-2. Request for Review.**

1. When ORS/CSS notifies a IV-A or Non-IV-A Medicaid applicant/recipient that she/he is not cooperating in a case, the applicant/recipient may contest the determination by requesting that ORS/CSS conduct an office administrative review. Such a review shall not be subject to the provisions of the Utah Administrative Procedures Act (UAPA), or be considered an adjudicative proceeding under Section 63-46b-5 and Rule R527-200. The applicant/recipient may choose instead to request an adjudicative proceeding under UAPA, or petition the district court to review the noncooperation determination and issue a judicial order based on its findings. If an administrative review is requested, the senior agent designated to conduct the review shall examine the case record, talk to the agent assigned to the case, consult with the team manager, and consider any new information the applicant/recipient provides to determine whether she/he has or has not met the cooperation requirements listed in Section 62A-11-307.2 or is not able to meet the requirements and is cooperating in good faith.

2. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the results of an administrative review conducted by an ORS/CSS senior agent, she/he may request that an ORS/CSS Presiding Officer conduct an adjudicative proceeding, or the applicant/recipient may petition the district court to review the initial noncooperation determination and the results of the administrative review, and issue a judicial order based on its findings.

3. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the Decision and Order issued by an ORS/CSS Presiding Officer after the close of an adjudicative proceeding, she/he may request reconsideration within 20 days after the date the Decision and Order is issued as provided in Sections 63-46b-13 and R527-200-14, or petition the district court to review the Decision and Order and issue a judicial order based on its findings.

**KEY: child support**
**April 21, 2003 62A-11-104(11)**
**Notice of Continuation January 10, 2008 62A-11-307.2**

**R527. Human Services, Recovery Services.**
**R527-56. In-Kind Support.**
**R527-56-1. In-Kind Support.**

1. "In-kind" support is support provided by the obligor to the obligee in lieu of payment of a cash support amount.

2. In cases where the obligee is receiving financial public assistance, the Office of Recovery Services/Child Support Services (ORS/CSS) shall give credit to obligors for in-kind support payments when cash support is court-ordered and there is an in-kind support agreement between the obligee and obligor meeting the following criteria:

a. Both the obligor and the obligee shall have agreed to the in-kind support.

b. The agreement shall be in writing.

c. The agreement pre-dates the obligee receiving financial public assistance.

d. The agreement shall have been filed with the court.

e. The value of the in-kind support is undisputed.

f. The in-kind support is easily valued.

g. The value of the in-kind support provided in a month equals or exceeds the monthly amount of cash support ordered by the court.

h. ORS/CSS shall have received written notice of the agreement and registered no objection to the agreement when the obligee applied for public assistance.

3. If the criteria listed above are met, ORS/CSS shall give the obligor credit for the monthly court-ordered amount for each month that the agreement was in effect and the in-kind support was provided.

4. ORS/CSS may take whatever action is necessary to require prospective payment of the court-ordered cash support during the time period that the obligee receives financial public assistance.

5. If the obligee signed an assignment or other document from the Department of Workforce Services or ORS/CSS which specified that upon receipt of financial public assistance by the obligee ORS/CSS requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and the office may recover the amount of in-kind support from the obligee.

6. If the obligee did not sign an assignment or other document as described in (5.), but otherwise received written notice from ORS/CSS that upon receipt of financial public assistance by the obligee ORS/CSS requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and ORS/CSS may recover the amount of in-kind support from the obligee.

7. Once an obligor receives written notice that an assignment of support rights is in effect and that ORS/CSS requires payment of cash support as ordered by the court, the obligor may be held responsible to pay directly to ORS/CSS any prospective support payments which are due under a support order, in the manner provided in the support order.

**KEY: child support**
**April 5, 1999 62A-11-104(1)**
**Notice of Continuation January 31, 2008 62A-11-307.2**

**R527. Human Services, Recovery Services.**
**R527-430. Administrative Notice of Lien-Levy Procedures.**
**R527-430-1. Authority.**

This rule establishes procedures for Notice of Lien and Levy pursuant to Subsections 62A-11-103(4), (14); 62A-11-104(9); 62A-11-304.1(1)(h)(i)(A) and (B), (1)(h)(ii), (1)(h)(iii), (1)(h)(iv), (2), (5)(b); 62A-11-304.5 (1)(b); and Section 62A-11-313.

**R527-430-2. Purpose.**

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to determine the amount that a financial institution or payor should release to an unobligated spouse who jointly owns a financial account, as defined in Subsection 62A-11-103(4), or who is a joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery, when ORS/CSS has subjected the account, non-means tested lump sum payment, judgment, settlement, or lottery to a Notice of Lien-Levy, and the unobligated spouse has contested the action.

**R527-430-3. Definitions.**

1. Terms used in this rule are defined in Sections 62A-11-103, 62A-11-303 and 62A-11-401.

2. In addition,"unobligated spouse" means a spouse and joint-owner of a financial account, joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery who is not obligated under the child support order that is the basis for the action.

**R527-430-4. Procedures on Joint Financial Accounts, Non-means Tested Lump Sum Payments, Judgments, Settlements, and Lotteries.**

The procedures below will apply when an unobligated spouse contests a Notice of Lien-Levy or a Notice of Lien-Levy, Lump Sum Payment upon a joint financial account or payor of a non-means tested payment, judgment, settlement, or lottery.

1. The unobligated spouse must make a written request to ORS/CSS to review the action within 15 days of the date the concurrent notice of lien-levy was sent to the obligor and the unobligated spouse, pursuant to Subsection 62A-11-304.1(5)(a).

2. In cases that involve amounts from financial institutions, the unobligated spouse must provide ORS/CSS with documentation of recent income and/or documentation of the sources of deposits made to the financial account. Examples of income documentation include: copies of tax returns for the prior year with W-2's attached; or, copies of two or more recent pay records. Examples of documentation of deposits to a financial account include: receipts or statements which show the sources of deposits made to the financial institution for the current month and one or more prior months. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, the unobligated spouse must provide ORS/CSS with documentation of the settlement percentage that each recipient should receive. Examples of payment documentation include: written verification from the insurance company or other payor, a copy of the payment or settlement agreement, and/or a copy of a signed judgment.

3. ORS/CSS will determine the amount that the financial institution should release to the unobligated spouse based upon the proportionate share of the income earned by the unobligated spouse, or the proportionate share of deposits made to the financial account by the unobligated spouse, or a combination of the two methods. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, ORS/CSS will determine the amount that the payor should release to the unobligated spouse based upon the validity of the documentation provided to ORS/CSS.

4. If it is determined that a portion of the property should be released to the unobligated spouse, ORS/CSS will notify the financial institution or payor pursuant to Subsection 62A-11-304.1(5)(b).

5. Upon receipt of a notice of release from ORS/CSS, the financial institution or payor shall release the property that is specified in the notice of release, but continue to secure the remaining property from unauthorized transfer or disposition until 21 days after the date the original Notice of Lien-Levy was sent, at which time the financial institution or payor shall surrender the remaining property to ORS/CSS pursuant to Subsection 62A-11-304.1(5)(b).

**KEY: child support**
**March 18, 1999 62A-11-304.1**
**Notice of Continuation January 14, 2008**

**R590. Insurance, Administration.**
**R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.**
**R590-157-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, which authorizes rules to implement the Insurance Code. Specific rulemaking authority is granted by Subsection 31A-3-303(2) to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax, and Subsection 31A-15-103(11)(d) to specify the stamping fee amount and how it is to be collected.

This rule supersedes Rule R590-119 Surplus Lines Stamping Fee.

**R590-157-2. Purpose and Scope.**

A. The purpose of this rule is to prescribe:

(1) the amount of the stamping fee and;

(2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and stamping fees; and.

(3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

(1) insurers, surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes and stamping fee;

(2) the advisory organization authorized to examine surplus transactions; and

(3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

**R590-157-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

D. "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

E. "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

F. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

G. "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

H. "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

I. "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the premium.

**R590-157-4. Stamping Fee Amounts.**

A. The surplus lines stamping fee is 1/4 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

**R590-157-5. Authorized Agency.**

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent for:

(1) collecting and remitting the premium tax imposed by Section 31A-3-301 on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106.

(2) examining surplus lines transactions under Section 31A-15-111; and

(3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section 6.

**R590-157-6. Accounting Procedures.**

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines producer. This statement shall list the transactions and premium amounts reported, the surplus lines premium taxes due under 31A-3-301, and the stamping fee due under Subsection 31A-15-103(11)(d).

D. The monthly statement shall be mailed to the surplus lines producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines producer shall remit payment in full to the Surplus Line Association amounts due shown on the monthly statement. Premium taxes and stamping fees shall be held in trust by the surplus lines producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.

H. The Surplus Line Association shall prepare the following reports for the benefit of the commissioner.

(1) A monthly report shall be prepared listing the surplus lines producers reporting premiums written during the month and the amount of the premiums, taxes and fees reported. The report shall also list the names of surplus lines insurers and the

amount of written premium attributed to them for the month. This report shall be submitted by the 15th of the subsequent month.

(2) An annual report shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by January 31 of each year.

(3) An annual financial report including income and expense and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

**R590-157-7. Enforcement Date.**

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

**R590-157-8. Severability.**

If any provision of this rule of 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 such provision to other persons or circumstances shall not be affected thereby.

**KEY: insurance fee, taxes**
**June 13, 2007 31A-2-201**
**Notice of Continuation January 10, 2008 31A-3-303**
**31A-15-103**

**R590. Insurance, Administration.**
**R590-218. Permitted Language for Reservation of Discretion Clauses.**
**R590-218-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to regulate the use of reservation of discretion clauses in forms filed by insurers with the department is found in Subsections 31A-21-201(3) and 31A-21-314(2).

**R590-218-2. Purpose.**

This rule prohibits the use of reservation of discretion clauses in forms that are not associated with ERISA employee benefit plans. It creates a safe harbor for insurance companies that provide insurance to ERISA employee benefit plans sponsored by employers, allowing insurers to know what language in insurance forms is acceptable to the department.

**R590-218-3. Applicability.**

This rule applies to all forms filed with the department, regardless of the insurance line or type of form.

**R590-218-4. Definitions.**

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301 and the following:

(1) "Employee benefit plan" means an employee welfare benefit plan as defined in 29 U.S.C. 1002(1) or an employee pension benefit plan as defined in 29 U.S.C. 1002(2) or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(2) "ERISA" means the Employee Retirement Income Security Act of 1974.

(3) "ERISA employee benefit plan" means an employee benefit plan subject to ERISA.

(4) "Form" is used as defined in Section 31A-1-301.

(5) "Reservation of discretion clause" means language in a form that purports to reserve discretion to interpret the terms of the contract, to determine eligibility for benefits under the plan, or to establish a scope of judicial review or standards of interpretation, to the plan administrator, the insurance company acting in the capacity of a plan administrator in an employee benefit plan, or the insurance company acting as the insurer.

**R590-218-5. Reservation of Discretion Clauses Prohibited - Exception - Safe Harbor Language.**

(1) The commissioner finds reservation of discretion clauses in forms to be in violation of Subsections 31A-21-201(3) and 31A-21-314(2). Accordingly, such clauses are not permitted in a form unless provided otherwise by this rule. Any reservation of discretion language previously accepted or approved by the department is hereby prohibited. Any use of reservation of discretion clause in a form required to be filed with the department is a violation of Subsections 31A-21-201(3) and 31A-21-314(2) and is prohibited, regardless of whether the form has been filed with or prohibited by the department.

(2) Notwithstanding Subsection (1), a reservation of discretion clause may be included in a form if the form is used only in ERISA employee benefit plans and the reservation of discretion clause has language that is the same as, or substantially similar to, the language in Subsection (3).

(3) The following language may be used in a reservation of discretion clause in forms filed for use in ERISA employee benefit plans (Parenthesis indicate that the company filing the form may use a name or pronouns as applicable):

"Benefits under this plan will be paid only if (the plan administrator) decides in its discretion that (the claimant) is entitled to them. (The plan administrator) also has discretion to determine eligibility for benefits and to interpret the terms and conditions of the benefit plan. Determinations made by (the plan administrator) pursuant to this reservation of discretion do not prohibit or prevent a claimant from seeking judicial review in federal court of (the plan administrator's) determinations.

The reservation of discretion made under this provision only establishes the scope of review that a federal court will apply when (a claimant) seeks judicial review of (the plan administrator's) determination of eligibility for benefits, the payment of benefits, or interpretation of the terms and conditions applicable to the benefit plan.

(The plan administrator) is an insurance company that provides insurance to this benefit plan and the federal court will determine the level of discretion that it will accord (the plan administrator's) determinations."

(4) A reservation of discretion clause in a form that is used in an ERISA employee benefit plan must be highlighted in the form by use of a bold font that is not less than 12 point type.

**R590-218-6. Filing Procedures.**

Rather than filing multiple forms for ERISA employee benefit plans and benefit plans not subject to ERISA, an insurer may elect to file one form with the department that has the reservation of discretion language included as a variable element, between brackets, with an accompanying notation stating that the reservation of discretion language will only be included in forms used for ERISA employee benefit plans.

**R590-218-7. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable

**KEY: insurance, discretion clauses**

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| **March 21, 2003** | **31A-2-201** |
| **Notice of Continuation January 11, 2008** | **31A-21-201** |
| | **31A-21-314** |

**R590. Insurance, Administration.**
**R590-243. Commercial Motor Vehicle Insurance Coverage.**
**R590-243-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-22-315(1)(b)

**R590-243-2. Purpose and Scope.**

The purpose of this rule is to define commercial motor vehicle insurance coverage as it applies to motor vehicle insurance reporting.

**R590-243-3. Definitions.**

Commercial Motor Vehicle Insurance Coverage means any coverage provided under a commercial automobile, garage or truckers policy form, regardless of the number of vehicles or entity covered and rated from either a commercial manual or rating rule as filed with the Utah Insurance Department.

**R590-243-4. Rule.**

All persons must use the above definition of commercial motor vehicle insurance to identify those vehicles within this classification, when reporting as required by 31A-22-315(2)(b).

**R590-243-5. 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.

**R590-243-6. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

**R590-243-7. Severability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

**KEY: commercial motor vehicle insurance**
**January 11, 2008 31A-22-315**

**R634. Natural Resources, Administration.**
**R634-1. Americans With Disabilities Complaint Procedure.**
**R634-1-1. Authority and Purpose.**

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the state Administrative Rulemaking Act. The department, pursuant to 28 CFR 35.107, 2002 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.

(2) The provision of 28 CFR 35, 2002 ed., implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by this or any such entity.

**R634-1-2. Definitions.**

(1) "Department" means the state Department of Natural Resources.

(2) "The ADA Coordinator" means the Department of Natural Resources' Coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "The Department of Natural Resources ADA Coordinating Committee" means that committee composed of:

(a) the two assistant directors;

(b) the Human Resource director; and

(c) the administrative assistant to the executive director.

(4) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction and Management; and

(e) Office of the Attorney General.

(5) "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.

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

(7) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or 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 department, or who would otherwise be an eligible applicant for vacant department positions, as well as those who are employees of the department.

**R634-1-3. Filing of Complaints.**

(1) A complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint shall be filed with the department's ADA Coordinator, preferably in writing or in another suitable format.

(3) Each complaint should:

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

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

(c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

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

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

**R634-1-4. Investigation of Complaint.**

(1) 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 R634-1-3(c) if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator will consult with the Department of Natural Resources' ADA Coordinating Committee. The ADA Coordinator may also seek assistance from the department's legal staff and the director of the division against which the complaint was filed, in determining what action, if any, shall be taken on the complaint. The ADA Coordinator shall consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation which would involve an individual's employment status.

**R634-1-5. Issuance of Decision.**

A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the ADA Coordinator, and a copy shall be forwarded to the complainant no later than 10 working days after the complaint has been filed. If more time is needed in the investigation, the ADA Coordinator shall communicate the reason and time frames to the complainant.

**R634-1-6. Appeals.**

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within 10 working days from the receipt of the decision.

(2) The appeal shall be filed, preferably in writing or in another suitable format, with the department's executive director or designee.

(3) 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 department's executive director or designee.

(4) 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.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding 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. The executive director or designee shall also consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation

authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation that would involve an individual's employment status.

(6) A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the executive director or designee, and a copy shall be forwarded to the complainant no later than 10 working days after the appeal has been filed. If more time is needed in the investigation, the executive director or designee shall communicate the reason and time frames to the complainant.

**R634-1-7. Classification of Records.**

(1) 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, 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.

(2)(a) All other information gathered as part of the complaint record shall be classified as private information.

(b) Only the written decision of the ADA Coordinator, executive director or designees shall be classified as public information.

**R634-1-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, 2002 ed.; or

(c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: civil rights, liberties**
**March 4, 2003 63-46a-3(2)**
**Notice of Continuation January 25, 2008**

**R655. Natural Resources, Water Rights.**
**R655-7. Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent.**
**R655-7-1. Authority and Effective Date.**

1.1. These rules establish and govern procedures for notifying the state engineer of sewage effluent use or change in the point of discharge for sewage effluent as required under Section 73-3c-8(1).

1.2. These rules govern all notifications for use of sewage effluent or change in point of discharge of sewage effluent commenced on or after May 5, 1998.

**R655-7-2. Definitions.**

"Application to Appropriate" means an official request for authorization to develop a source and quantity of water for beneficial uses as covered in Section 73-3-2.

"Beneficial Use" means the basis, the measure and the limit of a water right and includes the amount of water use allowed by the water right expressed in terms of the purposes to which the water may be applied. For example, in the case of irrigation, the beneficial use is expressed as the number of acres which may be irrigated by the water right (e.g. 40 acres).

"Change Application" means an application filed to obtain authorization from the state engineer to allow water right to be changed with respect to point of diversion, period of use, place of use, or nature of use. As allowed by Section 73-3-3, any person entitled to the use of water may make permanent or temporary changes listed by making application upon forms furnished by the state engineer.

"Depletion" means water consumed and no longer available as a source of supply; that part of a withdrawal that has been evaporated, transpired, incorporated into crops or products, consumed by man or livestock, or otherwise removed.

"Diversion" means the maximum total volume of water in acre-feet or the flow in second-feet which may be diverted as allowed by a water right to meet the needs of the beneficial uses authorized under the right.

"Effluent" means discharged wastewater or similar products, such as a stream flowing out of a body of water and includes products that result from the treatment of sewage and other pollutants pursuant to discharge limitations set under the Clean Water Act.

"Hydrologic System" means the complete area or basin where waters, both surface and underground, are interconnected by a common drainage basin.

"Notification" means an application filed with the state engineer requesting authorization to use or to change the point of discharge for sewage effluent.

**R655-7-3. Contents of the Notification.**

3.1. The notification shall include adequate information for the state engineer to determine if the use of sewage effluent is consistent with and without enlargement of the underlying water rights or if a change in point of discharge is required. This information shall be supplied on forms provided by the state engineer or an acceptable reproduction and shall include the information described below as well as any other information deemed necessary by the state engineer to evaluate the notification.

3.2. Information Required on a Notification for Use of Sewage Effluent.

A. The name and post office address of the applicant.

B. The Water Right Numbers of the water proposed for reuse.

C. An evaluation of the diversion and depletion limits of the underlying water rights. This would include evaluating the diversion and depletion limits allowed for the underlying right at the time it was originally approved and certificated by the state engineer.

D. The nature of use of the underlying water rights. This would include the present approved use of the water and the original approved use if different from the present.

E. The quantity of water in acre-feet or the flow in second-feet to be reused.

F. The point of diversion, the nature of use, and the place of use for the proposed sewage effluent use.

G. The point of discharge of the sewage effluent where the sewage would be released if it were not put to beneficial use.

H. An evaluation of the amount of water depleted from the hydrologic system from the use of the sewage effluent.

I. An evaluation of the cumulative total depletion of water from the hydrologic system from the initial use of water and the proposed use of the sewage effluent.

J. An indication whether or not a change application needs to be filed to cover the proposed uses. A change application is required if the proposed nature or place of use for the water reused was not authorized by the underlying water right upon which the reuse is based.

K. An indication whether or not an application to appropriate water needs to be filed to cover the proposed uses of any of the water. An application to appropriate is required if the reuse project proposes to use any unappropriated water of the state.

3.3. Information Required on a Notification for a Change in Point of Discharge

A. The name and post office address of the applicant.

B. The Water Right Numbers of the water proposed to change the point of discharge.

C. The quantity of water in acre-feet or second-feet to have the point of discharged changed.

D. The current point of discharge for the sewage effluent.

E. The proposed point of discharge for the sewage effluent.

F. In addition to the above information required, if the sewage effluent is to be put to a beneficial use in conjunction with the change in point of discharge, the information required in Subsection 3.2 ?Notification for Use of Sewage Effluent? must be provided.

**R655-7-4. Processing the Notification.**

4.1. Upon receipt of the notification, the state engineer shall determine if the information submitted is acceptable and complete.

A. If the information is acceptable and complete, the state engineer shall deem the notification filed.

B. If the information is not acceptable and complete, the state engineer shall return the notification to the applicant and indicate the deficiencies.

C. Once the notification is filed, the state engineer shall publish information from the notification to inform the public of its contents in accordance with Section 73-3c-8(2).

D. Any interested person may file comments with the state engineer within 20 days after the notice is published.

E. A meeting regarding the notification and public comment may be held at the discretion of the state engineer.

4.2. The state engineer shall determine if water use is consistent with, and without enlargement of, the underlying water right or whether an application is required to use the sewage effluent water.

A. If the proposed sewage effluent use is consistent with the and without enlargement of the applicant?s water rights, the state engineer shall issue a letter indicating that there is a water right for the proposed use.

B. If the proposed sewage effluent use is not consistent with the existing beneficial uses or enlarges the right, the state engineer shall issue a letter indicating that there is not a water right for the proposed use.

B.1. If a change application or an application to appropriate is required in conjunction with the proposed use of sewage effluent, it shall be the responsibility of the applicant to file the required application with the state engineer. The state engineer shall process the change application or the application to appropriate according to Section 73-3 of the Utah Code.

B.2. The state engineer shall review the change application and the application to appropriate according to Sections 73-3-3 and 73-3-8, respectively, of the Utah Code.

**KEY: sewage effluent use**
**February 1, 2003 73-3C**
**Notice of Continuation February 1, 2008**

**R657. Natural Resources, Wildlife Resources.**
**R657-12.Hunting and Fishing Accommodations for People With Disabilities.**
**R657-12-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a person with disabilities to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension;

(6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or

(7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

**R657-12-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.

(d) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(e) "Telescopic sights" means an optical or electronic sighting system that magnifies the natural field of vision beyond 1X and is used to aim a firearm, bow or crossbow.

(f) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use a legal hunting weapon or fishing device.

**R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.**

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

**R657-12-4. Obtaining Authorization to Hunt from a Vehicle.**

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

**R657-12-5. Companion Hunting and Fishing.**

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or

quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

**R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.**

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

**R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.**

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

**R657-12-8. Crossbows and Draw-Locks.**

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow or draw-lock to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow or draw-lock:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow or draw-lock; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads;

(b) a bow with an attached electronic range finding device; or

(c) a bow with an attached telescopic sight, except as provided in R657-12-9.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A drawn and cocked crossbow or bow with a draw-lock may not be carried in or on a vehicle.

(6) Conventional bows equipped with a draw-lock and used to hunt big game must conform with the minimum draw weights, and arrow and broadhead restrictions contained in R657-5.

**R657-12-9. Telescopic Sights.**

(1) A person who has a permanent vision impairment leaving them with worse than 20/40 corrected visual acuity in the better eye may receive a Certificate of Registration to use telescopic sights; if in the professional opinion of the eye care provider telescopic sights will sufficiently mitigate the effects of the disability to enable the person to:

(a) adequately discern between lawful and unlawful wildlife species and species genders; and

(b) safely discharge a firearm or bow in the field.

(2) A person with a qualified vision impairment may obtain a Certificate of Registration from the Division to use telescopic sights by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that:

(a) the applicant has a permanent vision impairment resulting in worse than 20/40 corrected visual acuity in the better eye; and

(b) telescopic sights will sufficiently mitigate the effects of the vision impairment to enable the applicant to:

(i) adequately discern between lawful and unlawful wildlife species and species genders; and

(ii) safely discharge a firearm or bow in the field.

**KEY: wildlife, wildlife law, disabled persons**
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**R657. Natural Resources, Wildlife Resources.**
**R657-13. Taking Fish and Crayfish.**
**R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Spearfishing (underwater)" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other devise to propel a pointed shaft to take fish from under the surface of the water.

(hh) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(ii)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

**R657-13-3. Fishing License Requirements and Free Fishing Day.**

(1) A license is not required on free fishing day, the

second Saturday of June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full bag and possession limit.

**R657-13-4. Fishing Contests.**

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 11 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests as provided in Subsection (1)(a) must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

**R657-13-5. Interstate Waters And Reciprocal Fishing Permits.**

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one bag limit may be taken and held in possession even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal permits to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

**R657-13-6. Angling.**

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license, or while fishing for crayfish without the use of fish hooks. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir or Lake Powell.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific

limitations apply.

**R657-13-7. Fishing With a Second Pole.**

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

**R657-13-8. Setline Fishing.**

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

**R657-13-9. Underwater Spearfishing.**

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while engaged in underwater spearfishing.

(3) Free shafting is prohibited while engaged in underwater spearfishing.

(4) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Jordanelle Reservoir, Ken's Lake, Lake Powell, Lost Creek Reservoir, Pineview Reservoir (with the exception of tiger muskie), Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, Willard Bay Reservoir and Yuba Reservoir are open to taking game and nongame fish by means of underwater spearfishing from June 1 through November 30. These are the only waters open to underwater spearfishing for game and nongame fish, except as provided in Subsection (8) below.

(5) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(6) The bag and possession limit for underwater spearfishing is the same as the bag and possession limit applied to anglers using other techniques in the waters listed in Subsection (4) above and as identified in the annual Utah Fishing Proclamation issued by the Utah Wildlife Board.

(7) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (4) above and as provided in Section R657-13-14.

(8) Carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

**R657-13-10. Dipnetting.**

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

**R657-13-11. Restrictions on Taking Fish and Crayfish.**

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

**R657-13-12. Bait.**

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

**R657-13-13. Prohibited Fish.**

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum);

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Leatherside chub (Snyderichthys copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Virgin River chub (Gila seminuda);

(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

**R657-13-14. Taking Nongame Fish.**

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(4).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

**R657-13-15. Taking Crayfish.**

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

**R657-13-16. Possession and Transportation of Dead Fish and Crayfish.**

(1)(a) At all waters except Strawberry Reservoir, Panguitch Lake and Jordanelle Reservoir, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

**R657-13-17. Possession of Live Fish and Crayfish.**

(1) A person may not possess or transport live protected

aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

**R657-13-18. Release of Tagged or Marked Fish.**

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

**R657-13-19. Season Dates and Bag and Possession Limits.**

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

**R657-13-20. Variations to General Provisions.**

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

**KEY: fish, fishing, wildlife, wildlife law**

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| | **23-19-1** |
| | **23-22-3** |

**R728. Public Safety, Peace Officer Standards and Training.**
**R728-500. Utah Peace Officer Standards and Training In-Service Training Certification Procedures.**
**R728-500-1. Authority.**

This rule is authorized by Sections 53-6-105(k).

**R728-500-2. Purpose.**

The purpose of in-service training is to provide Utah law enforcement officers with the opportunity to obtain the knowledge and skills necessary to perform their duties in a professional and skillful manner. To this end, and to satisfy the requirements of 53-13-103(4)(b), Utah Peace Officer Standards and Training will provide an in-service training program that addresses the needs of the Utah law enforcement community.

**R728-500-3. Statutory 40 Hour Training Requirement.**

Pursuant to Subsection 53-13-103(4)(b), "A law enforcement officer shall, prior to exercising peace officer authority, satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council."

**R728-500-4. Agency To Maintain Training Records.**

A. The chief administrative officer of an agency employing peace officers is responsible for the recording of all training obtained by his peace officers. This record shall contain the following:

1. the subject or topic instructed
2. the number of classroom or field hours
3. the location of the training
4. the date of the training
5. the name of the instructor

B. This record shall be accurate and available in the event of an audit or subpoena of training records.

**R728-500-5. Reporting Training, Agency Responsibility.**

At the conclusion of each training year (July 1 - June 30), agencies employing peace officers are required to report to POST the number of training hours received by each officer employed by that agency. This report is to be submitted online and is due to POST by July 31 and must contain the following information:

A. the name of the officer
B. the officers POST ID number
C. the number of training hours for the training year.

**R728-500-6. Violation of Statutory Training Requirement, Order of Suspension.**

A. The Division of Peace Officer Standards and Training will suspend the peace officer powers of any officer who fails to receive 40-hours of approved training during the previous training year. The officer, and the officers employing agency, will be notified by letter of this action. This sanction will remain in effect until the deficient training is completed and reported to POST. The officer will have until October 1 to make up the deficiency. POST will notify the officer and employing agency when the officers peace officer powers have been reinstated.

B. Training received by a suspended officer in a new training year will be credited to the previous (deficient) training year until the deficiency is made up. Training used to clear up an old deficiency cannot be credited to the new training year. (The same training cannot be counted twice.)

C. Suspended officers who continue to perform the duties and functions of a peace officer will be in violation of Section 53-6-202, and will be subject to the penalties set forth in Utah Administrative Code, Rule R728-411.

D. Officers who are deficient after October 1 will be reported to Utah Retirement System.

**R728-500-7. Authorized Training for POST In-Service Credit.**

All training offered by POST (basic training, in-service training, and regional training) is authorized for POST in-service credit. The authority and responsibility for accepting other forms of training belongs to the chief administrative officer of each law enforcement agency. If the chief administrative officer approves the training, POST will accept that training for credit to satisfy the 40-hour training requirement. However, the chief administrative officer accepts the responsibility and liability for course content and instructor qualification.

The following guidelines detail current POST rules regarding various types of in-service training.

**R728-500-8. Skills Areas Limited.**

The in-service training reported shall not include any identical class or instruction repeated within a 12 month period, unless the training is of an ongoing or continuing basis. Exception to this requirement includes training in certain skill areas such as Arrest Control Techniques, Firearms Training, Martial Arts, etc.

**R728-500-9. Basic Training Used For In-Service Credit.**

Training received during the completion of a Basic Training Session can be credited towards the in-service training requirement.

**R728-500-10. Credit For College Courses.**

Hour-for-hour credit will be granted for attendance in any college course that is required to earn a degree. The officer shall include a copy of the college transcript in his/her agency training file as proof of successful completion of the course.

**R728-500-11. Correspondence Courses.**

Correspondence courses may be approved for in-service credit. Prior approval shall be received from the officers chief administrative officer who will determine the number of credit hours the course is worth.

**R728-500-12. Video Tapes/Audiovisual Presentations.**

In-service credit may be granted for viewing law enforcement or position related audiovisual presentations (i.e., films, videotapes, satellite programming, etc.), as long as the training includes a structured lecture or classroom discussion regarding the viewed materials.

**R728-500-13. In-Service Credit For Instructors.**

Training credit may be granted to POST certified instructors on an hour-for-hour basis; an equivalent amount of credit may be claimed for preparation time. (example: a two hour class is worth four hours of in service credit: two hours of instruction plus two hours of preparation) In-service credit can be claimed by the instructor once each year for each course instructed. This is to avoid in-service credit granted for duplicate instruction.

**R728-500-14. Credit For Study For Promotional Exams.**

An agency chief administrative officer may grant up to five hours of in-service training credit to officers who have studied for, and passed, a promotional examination. Before awarding credit, the agency administrator shall ensure that:

A. The study material was not limited to the department's policy and procedure manual. Study aids shall consist of textbooks that deal with subjects such as Managerial Techniques, Supervisory Skills, Criminal Investigation, and other law enforcement skills.

B. The officer passed the examination. The officer need not be promoted to receive training credit.

**R728-500-15. Credit for Regularly Scheduled Meetings and Conferences.**

Monthly, quarterly, or other regularly scheduled meetings or conferences will not be granted in-service credit unless it can be specifically demonstrated the session is devoted to training and not for the purpose of exchanging information (i.e. detective meetings, intelligence briefings, etc.).

**R728-500-16. Credit for Physical Fitness Training.**

An officer can claim up to five hours of in-service training credit for participation in an agency approved physical training program.

**R728-500-17. Requirements for Officers Employed for a Portion of the Training Year.**

A full 40 hours of in-service training is required only if an officer is employed for the entire training year. Officers who are employed after the start of the reporting period, (July 1), need only to obtain a prorated number of training hours. Therefore, an officer shall obtain 3.5 hours for each month employed during the reporting year. (Example: An officer hired in January shall only be required to obtain 21 hours of in-service training for that training year.)

**KEY: law enforcement officers, in-service training**
**December 3, 2007 53-6-105**
**Notice of Continuation February 27, 2007 53-13-103(4)(b)**

**R728. Public Safety, Peace Officer Standards and Training.**
**R728-502. Procedure for POST Instructor Certification.**
**R728-502-1. Authority.**

This rule is authorized by Section 53-6-105 which gives the director of POST the authority to establish minimum requirements for the certification of training instructors.

**R728-502-2. POST Certified Instructors Authority and Duties.**

A. POST certified instructors will be authorized to teach POST sponsored classes to include Basic Training, In-Service, and Regional classes.

B. Instructors shall be required to become familiar with POST's most up-to-date Student Performance Objectives and to insure their instruction is not in conflict with the Student Performance Objectives.

C. Only POST certified instructors may teach in Basic Training classes, including satellite academy Basic Training programs. Exceptions must be approved by the Basic Training Bureau Chief or POST staff assigned as the satellite academy liaison.

**R728-502-3. Requirements to become a POST Certified Instructor.**

Applicants must possess two years of experience as a full-time peace officer, and complete an approved instructor development course.

**R728-502-4. Application For Instructor Certification.**

Applicants who have met the minimum required years of experience may apply to attend a POST approved Instructor Development Course. POST Instructor Certification will be granted upon completion of the following requirements:

1. The applicant will successfully complete a POST approved Instructor Development Course. This will include demonstrating to the course instructor the ability to develop a lesson plan that follows the style and format taught in the POST Instructor Development Course.

2. The applicant has signed the POST Contractual Agreement. This certifies the student has received, read, and understood the current POST approved performance objectives, and the student agrees to teach the approved POST performance objectives in the classroom.

**R728-502-5. Lesson Plans.**

Prior to providing instruction in Basic Training, In-Service, or Regional classes sponsored by POST, an instructor shall file a lesson plan with the Basic Training Bureau Chief or In-Service Bureau Chief. Lesson plans for Basic Training and In-Service classes shall follow POST Basic Training Learning Objectives, and shall be in a form identical or substantially similar to the approved Basic Training lesson plan format. Lesson plans shall be accompanied with supporting materials, such as computer based slide shows or videos, where used in the class instruction. Lesson plans for In-Service Career Development Courses shall also include an examination or quiz. When the class material is addressed in POST Basic Training examinations or quizzes, the instructor may be required to submit test items.

**R728-502-6. Guest Instructors.**

Guest instructors are not required to meet the certification requirements outlined above. Guest instructors should generally be licensed professionals, such as physicians, mental health therapists, and attorneys, or law enforcement professionals with substantial expertise and qualifications in a discrete subject matter. Guest instructor status will generally be granted only for a single class. Guest instructors shall comply with POST class room decorum and dress standards.

**R728-502-7. Department In-Service Instructors.**

Departments are not required to utilize POST certified instructors in their in-service training programs. This gives departments the ability to formulate training programs designed to meet their needs utilizing the local resources. In such instances, the department sponsoring the training will be solely responsible for the content of the class and the qualifications of the instructor.

**R728-502-8. Special Instructor Schools.**

A. Instructors shall complete special instructor schools before they teach technical and high liability law enforcement subjects, such as:

1. Firearms Instructor School
2. Defensive Tactics Instructor School (DT)
3. Emergency Vehicle Operation Instructor School (EVO)
4. Radar Instructor School

B. Completion of a specialty instructor school does not automatically qualify an officer to instruct a POST sponsored class; the officer must also complete a POST approved Instructor Development Course to be qualified to teach a POST sponsored class.

**R728-502-9. Special Instructor In-Service Requirements.**

A. Special instructors teaching in POST Basic Training programs, including satellite academy programs, shall be subject to the following In-Service requirements:

1. Basic Training Firearms Instructors must complete a minimum of 16 hours of instructor training in each training year. The instructor training requirement may be satisfied through participation as an instructor or student in POST Firearms Instructor In-Service Training (handgun and/or long gun), Law Enforcement Training Camp, International Association of Law Enforcement Firearms Instructor training conferences, Utah Department of Public Safety Firearms Instructor In-Service courses, and similar conferences and workshops, subject to approval of the In-Service Bureau Chief.

2. Defensive Tactics Instructors must attend no fewer than two quarterly DT instructor in-service sessions presented by the POST DT program coordinator. Defensive Tactics Instructors may also be required to attend in-service training at POST when DT program changes are effected from time to time.

3. Emergency Vehicle Operation Instructors must attend the annual POST EVO Instructor re-certification course.

B. Special instructors teaching only in department in-service programs are not subject to this requirement.

**KEY: law enforcement officers, instructor certification, in-service training**
**December 3, 2007 53-6-105**

**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, 63-46b-14, 68-3-7, and 68-3-8.5.**

(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) in the case of mailed or hand-delivered documents:

(i) 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

(ii) 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; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of 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) in the case of mailed or hand-delivered documents:

(i) 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

(ii) 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; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of 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.**

(1) At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

(a) 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.

(b) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(c) If more than one commissioner or administrative law judge is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(2) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) 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 after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

**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.**

(1) A prehearing, scheduling, or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The prehearing, scheduling, or status conference may be converted to an initial hearing upon agreement of the parties.

(2) 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.

(3) 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.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal 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.

(i) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(ii) 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, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iii) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) 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.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) 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.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

**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. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.**

(1) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(2) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) 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, or is under review.

(i) 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.

(ii) 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.

(b) 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.

**R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.**

The commission may convene an electronic meeting if all of the following conditions are met:

(1) the purpose of the meeting is to discuss a commission administrative rule;

(2) two commissioners are present at a single anchor location; and

(3) the number of separate connections for commissioners who are not present at the anchor location is no more than two.

**KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements**

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**Notice of Continuation March 20, 2007** **41-1a-209**
**52-4-207**
**59-1-205**
**59-1-207**
**59-1-210**
**59-1-301**
**59-1-302.1**
**59-1-304**
**59-1-401**
**59-1-403**
**59-1-404**
**59-1-501**
**59-1-502.5**
**59-1-602**
**59-1-611**
**59-1-705**
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**59-10-532**
**59-10-533**
**59-10-535**
**59-12-107**
**59-12-114**
**59-12-118**
**59-13-206**
**59-13-210**
**59-13-307**
**59-10-544**
**59-14-404**
**59-2-212**
**59-2-701**
**59-2-705**
**59-2-1003**
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**59-2-1007**
**59-2-704**
**59-2-924**
**59-7-517**
**63-46a-4**
**63-46b-1**
**76-8-502**
**76-8-503**
**59-2-701**
**63-46b-3**
**63-46b-4**
**63-46b-5**
**63-46b-6**
**63-46b-7**
**through**
**63-46b-11**
**63-46b-13**

**63-46b-14**
**63-46b-21**
**63-46a-3(2)**
**68-3-7**
**68-3-8.5**
**69-2-5**
**42 USC 12201**
**28 CFR 25.107 1992 Edition**

**R966. Treasurer, Unclaimed Property.**
**R966-1. Requirements for Claims where no Proof of Stock Ownership Exists.**
**R966-1-2. Proof Requirements and Bonds.**

A. For verified claims with a value less than $500.00, the person may file an affidavit entitled "Uniform Affidavit of Lost Certificate". Such affidavit will constitute and provide sufficient indemnification to permit the administrator to allow the verified claim.

B. For verified claims with a value equal to or greater than $500.00, the person may obtain a bond issued by a licensed surety company rated at least "A" or better by A.M. Best and Co., called an abandoned property bond. The bond shall be a fixed bond for dividends and other definite dollar value items. The bond shall be an open bond for stock certificates and shares claimed. Presentation of the proper bond, or both bonds if both are required, will constitute and provide sufficient indemnification to allow the administrator to allow the verified claim.

**KEY: stocks, bonds, property claims**
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