

R17. Administrative Services, Archives and Records Service.

R17-5. Definitions for Rules in Title R17.

R17-5-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to rules in Title R17.

(1) "AIIM" means the Association for Information and Image Management.

(2) "ANSI" means American National Standards Institute.

(3) "Certification" means the confirmation that images recorded on microfilm are accurate, complete, and unaltered reproductions of original records.

(4) "Official Custody" means the responsibility for and implementing policy for the care and access of records.

KEY: records retention, public information, access to information

August 20, 2008

63A-12-104

R17. Administrative Services, Archives and Records Service.**R17-6. Records Storage and Disposal at the State Records Center.****R17-6-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the storage and disposal of records at the State Records Center.

R17-6-2. Records Storage and Disposal -- Agency Responsibility.

(1) An agency may transfer semi-active records to the Records Center for storage.

(2) Prior to transfer, the agency must verify that records have a State Archives record series number, an approved retention schedule, and have met all in office retention requirements.

(3) Records stored in the State Records Center remain in the official custody of the agency that transferred them.

(4) In the event that an agency has not transferred records to the Records Center, it is the agencies responsibility to manage, maintain, and destroy records in its custody in accordance with the records series' approved retention schedule and to document the records destruction.

R17-6-3. Records Storage and Disposal -- Archives Responsibility.

(1) The State Archives stores semi-active records with a scheduled retention of less than 100 years at the State Records Center in accordance with the approved retention schedule. The State Records Center may accept records for which a proposed retention has been presented to the State Records Committee with the provision that if the committee does not approve the retention, the records will be returned to the agency.

(2) The State Archives destroys records stored at the Records Center in accordance with the approved retention schedule and upon authorization from the creating agency. If the creating agency does not respond to the second request for authorized destruction within ninety (90) days, the records may be returned to the agency.

(3) In the event that a record has met its scheduled retention requirements and the Records Center is unable to locate an authorized agency to provide destruction approval, the records will become the official custody of the Utah State Archives and the archivist will determine the disposition of the records.

KEY: records retention, public information, access to information

August 20, 2008

63A-12-104

R17. Administrative Services, Archives and Records Service.**R17-7. Archival Records Care and Access at the State Archives.****R17-7-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the care and access of records in the custody of the State Archives, including classification or reclassification.

R17-7-2. Custody of Records, Care and Access.

(1) The State Archives accepts records which are placed in the official custody of the State Archivist in accordance with Sections 63G-2-604, 63A-12-102, 63A-12-103, and 63A-12-105.

(2) Records in the State Archives are available for public use in the State Archives insofar as use of the records is not restricted by law.

(3) Except as otherwise provided by law, records may not be removed or loaned for use outside the State Archives.

R17-7-3. Access to Records.

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records.

(7) Patrons may not remove government records from the Research Center.

R17-7-4. Enforcement.

(1) If a patron violates R17-7-3, Research Center staff may issue a verbal warning.

(2) If, after unheeded warning, or if there is risk of immediate or severe damage to records, staff may request the patron to leave immediately.

(3) If a patron fails to promptly comply with staff request to leave, staff may request assistance from building security personnel and, from city police.

(4) These enforcement subsections do not limit Archives from performing its duties and enforcing these rules as otherwise allowed by law.

R17-7-5. Classification.

(1) Upon receiving a request to classify or reclassify a record or information within a record that is in the official custody of State Archives, State Archives may provide notice to any existing governmental entity that has classified the record series or record.

(2) No later than three days of the date of the notice, the governmental entity may notify State Archives of any decision regarding the classification of the record or information within the record.

(3) If the governmental agency fails to notify State Archives of any decision, then State Archives must classify or reclassify the record or information within the record as required

by law or may classify or reclassify the record or information as allowed by law.

KEY: records retention, public information, access to information

August 20, 2008

63A-12-104

R17. Administrative Services, Archives and Records Service.**R17-8. Application of Microfilm Standards.****R17-8-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the microfilming standards of permanent and long-term records.

R17-8-2. Micrographic Standards.

(1) Anyone microfilming Utah state and local government documents for retention purposes shall microfilm these records in conformity with the ANSI/AIMS Imaging Guidelines 2004, which are incorporated by reference.

(2) The State Archives must certify that each roll of microfilm complies with these Imaging Guidelines prior to the destruction of the original records.

(3) The State Archives is the official custodian of all master microfilm of permanent and long-term records.

(4) Access to microfilmed records is permitted in accordance with the approved retention and classification for the records series.

KEY: records retention, public information, access to information

August 20, 2008

63A-12-104

R25. Administrative Services, Finance.**R25-14. Payment of Attorneys Fees in Death Penalty Cases.****R25-14-1. Authority and Purpose.**

(1) This rule is enacted pursuant to Section 78B-9-202.

(2) The purpose of the rule is to establish the procedures for payment of attorneys' fees and litigation expenses by the Division of Finance to legal counsel appointed by courts to represent indigent persons sentenced to death who request representation to file an action under Title 78B, Chapter 9, Post-Conviction Remedies Act.

(3) All payments under this rule are subject to the availability of funds appropriated by the Utah State Legislature for the purpose of making these payments.

(4) This rule applies to fees and expenses incurred on and following the effective date of this rule.

R25-14-2. Request for Payment.

To obtain payment for attorney's fees and litigation expenses, counsel appointed by a court, pursuant to Section 78B-9-202, shall:

(1) Present to the Division of Finance a certified copy of the court order of appointment before or at the time the first request for payment is submitted.

(2) Obtain the court's review and written approval certifying that the fees and expenses were reasonable in accordance with Section 78B-9-202 and this rule.

(3) Submit the court's written approval and a request for payment to the Division of Finance.

(4) The request for payment must verify that the work has been performed as provided by this rule and Section 78B-9-202 and be signed by the appointed counsel. The request for payment must be sufficiently itemized to describe the services performed and such other information as may be reasonably required by the Division of Finance to properly review and process the payment. Original invoices must be submitted for all litigation expenses for which payment is requested.

(5) Before making payment, the Division of Finance may request additional supporting documentation.

(6) The Division of Finance may withhold payment for any item in a request for payment when such item conflicts with this rule or the Post-Conviction Remedies Act pending resolution of the amount requested.

R25-14-3. Scope of Services.

(1) All appointed counsel, by accepting the court appointment to represent an indigent client sentenced to death and by presenting a request for payment to the Division of Finance, agree in accordance with the Post-Conviction Remedies Act to provide all reasonable and necessary post-conviction legal services for the client, and represent the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.

(2) Full compensation for the legal services performed and litigation costs incurred shall be the amounts provided in the Post-Conviction Remedies Act and this rule.

R25-14-4. Schedule of Payments of Attorneys Fees.

(1) The Division of Finance shall pay reasonable attorney fees for appointed counsel up to the maximum rate of \$125 per billable hour not to exceed a total amount on \$60,000, except as provided in the subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services were performed, appointed counsel files a request with the court to exceed the total amount allowed by subsection (1);

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the amount in accordance with Section 78B-9-202.

R25-14-5. Payment of Reasonable Litigation Expenses.

The Division of Finance shall pay reasonable litigation expenses not to exceed a total amount of \$20,000 except as provided in subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services are performed or expenses are incurred, appointed counsel files a request with the court to exceed the total amount;

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the total amount in accordance with Section 78B-9-202.

(3) Travel costs, including mileage, per diem for meals, and lodging will be reimbursed based on state rates and criteria published in rule or policy by the Division of Finance. Travel is not reasonable when the purpose of the travel can reasonably be accomplished in another way, such as by telephone or correspondence.

**KEY: attorneys, fees, capital punishment, post-conviction
August 19, 2008**

78-9-202

Notice of Continuation January 17, 2007

R27. Administrative Services, Fleet Operations.**R27-2. Fleet Operations Adjudicative Proceedings.****R27-2-1. Informal Proceedings.**

(1) The following categories of proceedings are hereby designated as informal proceedings under the Utah Administrative Procedures Act, Section 63G-4-202:

(a) Determinations regarding operation of Fleet Operations within state government.

(b) Any agency action not exempted under the Administrative Procedures Act, Section 63G-4-102 et seq.

(2) Procedures governing informal adjudicatory proceedings:

(a) No response need be filed to the notice of agency action or request for agency action.

(b) The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for agency action, otherwise, at the discretion of the agency head no hearing will be held.

(c) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(d) A hearing will be held only after timely notice of the hearing has been given.

(e) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

(f) No person, as defined in the Utah Administrative Procedures Act, Subsection 63G-4-103(1)(g), may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(g) Any hearing held under this rule is open to all parties.

(h) Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency head shall issue a written decision stating the decision, the reasons for the decision, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(i) The agency head's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing. Decision from the Division may be appealed to the Executive Director of the Department of Administrative Services.

(j) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(k) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the agency and may be appealed to the appropriate district court.

KEY: appellate procedures, administrative procedures
July 15, 1996 **63G-4-102**
Notice of Continuation January 30, 2006

R27. Administrative Services, Fleet Operations.**R27-4. Vehicle Replacement and Expansion of State Fleet.****R27-4-1. Authority.**

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi) 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

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

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

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

(2) Pursuant to Subsection 63J-1-306(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the Fleet Vehicle Advisory Committee (FVAC) DFO staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV)

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the FVAC DFO staff, determine and establish, for each fiscal year:

(a) a SSFV

(b) the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

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

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

R27-4-3. Delegation of Division Duties.

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

provided that:

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

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

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

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

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

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

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

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

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

(f) a representation that the agreement is subject to the provisions of UCA 63J-1-306, Internal Service Funds - Governance and review; and

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

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

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

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

R27-4-4. Vehicle Replacement.

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

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

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may

request a non-SSFV as long as one or more of the following justifications are cited:

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services) capacity
- (h) Attached equipment capacity (snow plows, winches, etc.)
- (i) Other justifications as approved by the Director of DFO or the director's designee.

(5) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of a motor vehicle with a non-standard vehicle.

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

(7) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

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

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

R27-4-5. Fleet Expansion.

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

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

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

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

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

(4) For the purposes of this rule, only the following shall

constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved

when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

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

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

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

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

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

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

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

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

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

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

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

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

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes;

and

(iv) procurement source; and

(v) purchase price of item; and

(vi) expected life of item in years; and

(vii) warranty period; and

(viii) serial number;

(ix) initial installation date; and

(x) current location of item (warehouse, vehicle number);

and

(xi) anticipated replacement date of item; and

(xii) actual replacement date of item; and

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

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

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

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

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

R27-4-8. Vehicle Class Differential Upgrade.

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

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

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

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

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

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

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

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

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

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

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

replacement vehicle is a more expensive vehicle belonging to the same or another class.

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

R27-4-9. Cost Recovery.

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

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

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

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

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

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

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

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

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

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

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

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

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

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

R27-4-10. Executive Vehicle Replacement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) year, make and model;
- (b) vehicle identification number (VIN);
- (c) actual miles traveled per month;
- (d) driver and/or program each vehicle is assigned to;
- (e) location of the vehicle;
- (f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

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

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

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

R27-4-13. Disposal of State Vehicles.

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

KEY: fleet expansion, vehicle replacement

- March 6, 2008 63A-9-401(1)(a)
- Notice of Continuation July 25, 2007 63A-9-401(1)(d)(v)
- 63A-9-401(1)(d)(ix)
- 63A-9-401(1)(d)(x)
- 63A-9-401(1)(d)(xi)
- 63A-9-401(1)(d)(xii)
- 63A-9-401(4)(ii)

R27. Administrative Services, Fleet Operations.**R27-5. Fleet Tracking.****R27-5-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(b), which requires the Division of Fleet Operations (DFO) to establish one or more fleet automation and information systems for state vehicles.

(2) The purpose of this section is to insure that state vehicles and miscellaneous equipment under the ownership or control of all state agencies are accounted for and properly inventoried.

R27-5-2. Items Tracked in the Fleet Information System.

(1) All "State Vehicles," as defined in Subsection 63A-9-101(7) shall be tracked in DFO's fleet information system.

(2) For the purpose of managing the state fleet, DFO makes a definitional distinction between the following categories of state vehicles:

- (a) "Light Duty Vehicle" as defined in R27-1-2(24);
- (b) "Heavy Duty Vehicle" as defined in R27-1-2(23);
- (c) "Non-road vehicle," as defined in R27-1-2(30);
- (d) "Unique Motorized Equipment," as defined in R27-1-2(43).

(3) "Miscellaneous Equipment," as defined in R27-1-2(25), may be tracked in DFO's fleet information system.

(4) Each agency shall be responsible for entering and maintaining accurate data about each motor vehicle that it owns, operates, or otherwise controls, into DFO's fleet information system.

(5) The division shall provide each agency with program access, software updates, licensing fee requirements, system reports, LAN coordination, user manuals, help-desk access, and user training necessary to maintain and operate the divisions' fleet information system to track state vehicles.

(6) The costs associated with tracking state vehicles shall be a component of the MIS rate.

KEY: state fleet information system

April 8, 2002

63A-9-402(1)(b)

Notice of Continuation January 29, 2007

R27. Administrative Services, Fleet Operations.**R27-6. Fuel Dispensing Program.****R27-6-1. Authority.**

This rule is established pursuant to subsections 63A-9-401(1)(d)(vi) and 63A-9-401(1)(f) which require the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for fuel management programs, and to create and administer a fuel dispensing services program.

R27-6-2. Participation.

(1) Pursuant to Subsection 63A-9-401(5)(a)(i), each state agency and each institution of higher education shall subscribe to the fuel dispensing services provided by the division.

(2) Pursuant to Subsection 63A-9-401(5)(a)(ii), state agencies may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by DFO.

(3) Counties, municipalities, school districts, special districts and federal agencies may subscribe to fuel dispensing services provided by DFO.

R27-6-3. State Fuel Network.

(1) The state fuel network consists of all fuel sites owned, leased or under the control of the DFO; all state agencies including institutions of higher education; all counties, municipalities, school districts, and special districts that subscribe to the services provided by DFO; and all privately owned fuel sites that participate in the Utah Fuel Card program.

R27-6-4. Cost Recovery.

(1) DFO shall establish, for each fiscal year, fuel rates designed to recover the costs associated with the purchase of fuels and overhead costs associated with running the state fuel dispensing network.

R27-6-5. Authority to Issue a State of Utah Fuel Card.

(1) Except when delegated pursuant to the provisions of R27-6-6, the authority to issue State of Utah Fuel Cards (fuel card) and assign Personal Identification Numbers (PIN) resides exclusively with DFO.

(2) All fueling cards associated with state vehicles shall be documented in the fleet information system. Only one fuel card shall be issued to each vehicle. The PIN issued by the fuel card system to individual employees for their exclusive use is an electronic "signature" of the person to whom it is issued. Use of the fuel card and PIN are restricted to fueling the vehicles to which the fuel card was issued.

(3) Requests for fuel cards and/or PINs shall be documented in the Information Technology Services (ITS) Helpdesk software.

(4) Standard Fuel Network Vehicle and Employee PIN worksheets shall be used when requesting fuel cards and PINs.

(5) DFO shall distribute to each agency a monthly report showing all active fuel cards issued to the respective agencies.

(a) Agencies shall review the monthly reports and notify the State Fuel Technicians in charge of fuel cards of any discrepancies discovered.

(b) State Fuel Technicians shall investigate the discrepancy and make the necessary changes to the fuel card program and the fleet information system.

(6) Agencies may request that a fuel card history report accompany the monthly active fuel card report.

(7) In the event that a fuel card is no longer required due to card expiration, malfunction, loss, misuse, or the vehicle's disposal, the card shall be deleted from the fleet fuel card system and identified as "expired" in the fleet information system. No modifications to the fuel card shall be allowed.

(8) Only State Fuel Technicians have the authority to make

changes to fuel card information and to delete fuel cards from the system.

(9) In the event that a fuel card is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to DFO.

R27-6-6. Delegation of Authority to Issue Fuel Cards and Assign PINS.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to issue fuel cards and assign PINs to other state agencies and institutions by contract or other means authorized by law, if,

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated, including but not limited to,

(i) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are or will be capital only lease vehicles; and

(ii) a provision that the vehicle for which the fuel card is being issued, and to which the PIN is being assigned, is allocated or assigned to the agency issuing both the fuel card and the PIN; and

(iii) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are in DFO's fleet information system.

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

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

(3) An agency given the authority to issue fuel cards and assign PINs shall not issue fuel cards for vehicles not in DFO's fleet information system.

(4) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

(5) In the event that a fuel card, issued by an agency other than DFO is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to the issuing agency.

R27-6-7. Authorized Use of a State of Utah Fuel Card.

(1) The following procedures shall be followed when purchasing fuel from either a state run or a participating commercial public fueling site:

(a) Verify that the vendor is a participant in the State Fuel Network Program; and

(b) Follow the procedures that apply to the particular site and enter the correct information when prompted in order to purchase fuel.

(2) Except as provided in paragraph 3 of this section, the fuel card shall only be used to purchase:

(a) Fuel; and

(b) Fluids, car washes and minor miscellaneous items for state vehicles whose value, taken together, shall not exceed the monthly monetary limits determined by DFO.

(3) Agency requests for a fuel card for use by a supervisor for emergency purposes, or for use with small miscellaneous equipment shall be approved provided the agency:

(a) Represents that they have a reconciliation or fuel

transaction auditing process in place for the review of miscellaneous transactions in order to prevent theft, abuse and fraud relating to the use of the card; and

(b) Cooperates with DFO to insure all fuel dispensed using fuel cards not assigned to specific vehicles is properly documented in the fleet information system through the use of a manual fuel ticket.

R27-6-8. Reimbursements.

(1) Reimbursements for the use of the operator's personal funds in order to purchase fuel and/or other services shall be granted:

(a) when the operator has verified that the vendor is a participant in the State Fuel Network Program and at the time when fuel was being purchased, there was a problem with either the PIN or card reader that could not be repaired prior to purchase; or

(b) when the operator purchases from a vendor that is not a participant in the State Fuel Network and there is no participating vendor in the immediate vicinity of the non-participating vendor.

(c) at the discretion of the fuel network manager when circumstances indicate that the use of personal funds was necessary.

R27-6-9. Meter Rejects.

(1) Drivers of state vehicles are required to enter the correct mileage, excluding tenths of miles, when using the fuel card assigned to the vehicle.

(2) In the event that the driver makes an error in the mileage update, the driver or the agency's contact shall provide designated DFO personnel with a correct mileage update.

(3) In the event that an individual operating a state vehicle inputs a blatant error meter reject, DFO will impose on the agency, an one time charge (OTC) in accordance with applicable rate schedule. A blatant error meter reject occurs when the operator enters the same number as the mileage (e.g., 000000) or enters a fictitious number that is not close to the current odometer reading (e.g., 123456). DFO may, upon request by the agency, allow five business days during which to investigate a blatant error. If the blatant error is deemed to have been the result of equipment failure, DFO will not impose the OTC.

(4) Agency contacts shall, within five business days of the request, respond to a DFO request to investigate a meter reject. In the event that the agency fails to respond or make arrangements for an extension of the time period in which to investigate the meter reject, DFO will impose an OTC in accordance with the applicable rate schedule, upon the agency.

R27-6-10. Bulk Fuel Purchases.

(1) For all fuel sites for which DFO purchases fuel:

(a) The authority to purchase bulk fuel resides exclusively with DFO.

(b) All fuel stored at, or contained in, fuel sites for which DFO purchases fuel shall be the property of the State of Utah, DFO.

R27-6-11. Fuel Site Maintenance.

(1) All fuel sites in the state fuel network for which DFO purchases fuel shall be managed by the DFO. All fuel sites for which DFO does not purchase fuel shall be managed by the agency, subscribing county, municipality, school district, or special district that has ownership, possession, or control of the site.

(2) Except for privately owned, leased or controlled fuel sites, maintenance at all other fuel sites in the State Fuel Network, shall be performed only by personnel of the DFO and/or their authorized agents.

(3) Only DFO personnel and/or authorized agents shall be

authorized to disconnect power or communication from any fueling equipment, including, but not limited to, tanks and monitoring equipment.

(4) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall not perform, or give authorization to perform, any site maintenance.

(c) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall report any maintenance concerns to the DFO.

(d) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any maintenance or service needs.

(4) In the event that a fuel site operated by an agency, subscribing county, municipality, school district or special district is not part of the Utah Fuel card system, it shall be the responsibility of the fuel site personnel to keep records of all following information for entry into the fleet information system:

(a) Correct odometer reading;

(b) Operators' PIN;

(c) Vehicle number or license plate number;

(d) Other information as required by DFO.

R27-6-12. Underground Fuel Storage Tanks.

(1) DFO shall be responsible for coordinating the installation of state owned underground storage tanks and the upgrading, retrofitting, repair or removal of existing underground storage tanks located on or about property, easements or rights of way owned, leased or otherwise controlled by agencies.

(2) DFO shall be responsible for paying for all operations related to the installation, upgrading, retrofitting, repair or removal of underground fuel storage tanks listed in its Underground Storage Tank Inventory.

(3) The costs associated with all operations related to the installation, repair or removal of Underground Fuel Storage Tanks that are not contained in DFO Underground Storage Tank Inventory shall be the responsibility of the agency having ownership, possession or control of the site in which the storage tank is found.

(4) All agency fuel site personnel shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any storage tank maintenance or service needs.

R27-6-13. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect of an operator shall be the responsibility of the agency employing the operator at the time of the incident.

R27-6-14. Delegation of Authority to Manage and Maintain Fuel Storage Tanks.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to manage and maintain fuel storage tanks holding fuel that is not for use in motor vehicles, to other agencies or institution, by contract or other means authorized by law, if:

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

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

(c) a provision for periodic administrative audits by either

DFO or the Department of Administrative Services; and

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

(3) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

KEY: fuel dispensing

January 10, 2005

63A-9-401(1)(c)(vi)

Notice of Continuation February 14, 2007 63A-9-401(1)(e)

R27. Administrative Services, Fleet Operations.**R27-7. Safety and Loss Prevention of State Vehicles.****R27-7-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations (DFO) to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify, within 24 hours of the occurrence of the accident, DFO, Risk Management and the agency's management.

R27-7-3. Loss of Authority to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated.

(c) The employing agency may petition the Driving Privilege Review Board (DPRB) to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked beyond the period for which the authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(d) The DPRB may extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked, beyond the period for which the driver's license is denied, cancelled, disqualified, suspended, if the evidence regarding the circumstances surrounding the denial, cancellation, disqualification, suspension or revocation of the authorized driver's license and driving history indicates that it is in the best interest of the state to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked.

(3) The authority to operate a state vehicle shall be suspended or revoked for any of the following grounds:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a five (5) year period; or

(b) The authorized driver, while acting within the scope of employment, has received 5 or more citations for violating motor vehicle laws during a five (5) year period; or

(c) The unauthorized use, misuse, abuse or neglect of a state vehicle; or

(d) On the basis of citizen complaints, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The employing agency shall impose a period for which the authority to operate a state vehicle will be withdrawn, suspended or revoked under the circumstances described in R27-7-3(3)(a),(b) or (c), on the basis of an investigation of the circumstances surrounding each accident and the authorized driver's driving history.

(5) The withdrawal of authority to operate a state vehicle shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(6) The authorized driver petition the DPRB to review the withdrawal, suspension or revocation of the authority to operate a state vehicle imposed by the employing agency pursuant to R-

27-7-3(3) and (4).

(7) Any determination made by the employing agency with regard to the withdrawal, suspension or revocation of the authority to operate a state vehicle, pursuant to R27-7-3(3) and (4) shall remain in effect until such time as a review by the DPRB can be conducted, and a decision rendered.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct quarterly reviews of all accidents or complaints involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents and complaints involving drivers of vehicles being used in the course of conducting state business.

(3) The ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards established by the National Safety Council.

(4) Each agency ARC shall, within five (5) business days of reviewing an accident, provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable.

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

(e) Following too closely;

(f) Improper care of the vehicle;

(g) Improper backing;

(h) Improper parking;

(i) Improper turn or lane change;

(j) Reckless Driving as defined in Utah Code 41-6-45;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

(a) The state vehicle is struck while properly parked;

(b) The state vehicle is vandalized while parked at an authorized location;

(c) The state vehicle is an emergency vehicle, and

(i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and

(ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or

(iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

(4) The ARC shall notify DFO of their findings, as to whether the accident in question was preventable or non-preventable, regarding each accident case reviewed.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the

following:

(a) The authorized driver shall be required to attend a Risk Management-approved driver safety program after being involved in the first preventable accident;

(b) The driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course after being involved in a second preventable accident;

(c) The driver may have his or her authority to operate a state vehicle suspended or revoked, if he or she is involved in a third preventable accident within five calendar years of being involved in the first preventable accident.

(3) An employee whose authority to operate a state vehicle has been suspended or revoked pursuant to R27-7-3(3) and (4), may petition the DPRB for a review of the agency ARC's determination. The suspension of state driving privileges shall continue until such time as a formal hearing before the DPRB can be held, and a decision rendered. The provisions of the DPRB's decision, including the revocation of the driver's authority to drive a vehicle in the conduct of state business, will govern from that time forward.

R27-7-7. Driving Privilege Review Board.

(1) The Driving Privilege Review Board (DPRB) shall have no more than 3 voting members. The Department of Administrative Services, the Division of Risk Management and the agency whose employee is the subject matter of the case pending before the DPRB shall each have a voting member.

(2) Agency actions that involve the withdrawal, suspension or revocation of the authority to operate a state vehicle are subject to review by the DPRB.

(3) The DPRB shall, upon receipt of the petition for review from the authorized driver, pursuant to R27-7-6(3), schedule a review and render a decision on whether to uphold the agency's decision regarding the withdrawal, suspension or revocation of the authority to operate a state vehicle, or impose a different penalty.

(4) The DPRB shall, upon receipt of an employing agency's petition, pursuant to R27-7-3(2)(c), schedule a review and render a decision on whether to extend the period for which the authority to operate a state vehicle is withdrawn, beyond the period for which the authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(5) The employing agency, and the authorized driver shall be notified of the hearing date, the reason for the hearing, the substance of the charges, as well as their respective right to respond to the petition, rebut the evidence presented and present evidence in their respective behalf at the hearing.

(6) The DPRB shall render a decision that will be forwarded to the agency for enforcement. In making its decision, the DPRB may consider factors, including but not limited to, the severity of injuries, the extent of damages, the authorized driver's culpability and willfulness.

(7) The DPRB may impose a range of penalties from no action to a withdrawal, suspension or revocation of the authority to operate a state vehicle for an indefinite period. In no case shall the withdrawal, suspension or revocation of the authority to operate a state vehicle be less than the period of withdrawal, suspension or revocation of the privilege to drive imposed by the courts.

(8) An employee whose authority to operate a state vehicle has been withdrawn, suspended or revoked may petition the DPRB for reinstatement of the authority on the basis of changed circumstances. The employee shall provide proof of the change in circumstances that would justify the reinstatement of authority.

Notice of Continuation January 20, 2006

KEY: accidents, incidents, tickets, ARC

July 8, 2003

63A-9-401(1)(d)(iii)

R27. Administrative Services, Fleet Operations.**R27-8. State Vehicle Maintenance Program.****R27-8-1. Authority.**

This rule is established pursuant to Subsections 63A-9-401(1)(d)(i) and (iv), which require the Department of Administrative Services, Division of Fleet Operations (DFO) to establish rules governing maintenance operations for state vehicles, and preventative maintenance programs.

Unless specifically exempted in writing by DFO, agencies shall comply with the preventive maintenance and repair provisions of this rule.

R27-8-2. Preventive Maintenance.

(1) Preventive maintenance (PM) shall be performed in accordance with the schedule set forth in the Preventive Maintenance Program Coupon Book that accompanies each full service lease vehicle. The Preventive Maintenance Program Coupon Book is located in the glove compartment of each full service lease vehicle.

(2) The driver or agency shall take the vehicle to a vendor that participates in the vendor's service network. In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(3) Agencies leasing state vehicles are responsible for complying with annual safety and emission inspections required by state law.

(a) Inspection compliance certificates shall be forwarded to the DFO offices for vehicle registration.

(4) When taking a state vehicle in for preventive maintenance, the drivers shall present the Preventive Maintenance Coupon Book to the vendor.

R27-8-4. Repairs.

(1) In the event a state vehicle is in need of repair(s), the driver shall contact the vendor prior to having any services performed. A toll free telephone number is listed on the front cover of the Driver Operating Manual and the Program Information Booklet.

(a) The driver of the vehicle shall provide the vehicle number and odometer reading to the vendor.

(b) In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(c) In the event that the vehicle is already in a service facility, the driver shall direct the shop to contact the vendor. Authorization to perform the required repairs shall be given by the vendor.

(2) When taking a state-owned vehicle in for repair(s), the driver shall identify the vehicle as belonging to DFO, and not the division or department to which the vehicles are leased.

R27-8-5. Agency Maintained Repair Shop Parts Inventory.

(1) Agencies with capital only lease vehicles may, at their own expense maintain and operate maintenance and repair facilities to care for leased vehicles.

(2) All maintenance and repair shop personnel working on capital only lease vehicles shall be trained in the use of DFO's fleet information system, specifically the work-order ticket module of the system.

(3) All maintenance and repairs performed on capital only lease vehicles shall be entered into the fleet information system work-order module within 24 hours of the completion of the work.

(4) All maintenance and repairs performed or done on full service leased vehicles shall require prior approval from the vendor for preventive maintenance and repair services. The agency maintenance and repair facility shall bill the vendor for services rendered.

(5) Agency maintenance and repair facilities shall comply with all state and federal law, state and federal rules and regulations governing motor vehicle maintenance and repair facilities.

KEY: vehicle maintenance, repair, vendor approval

April 8, 2002

63A-9-401(1)(d)(i)

Notice of Continuation February 21, 2003

63A-9-401(1)(d)(iv)

R35. Administrative Services, Records Committee.**R35-1. State Records Committee Appeal Hearing Procedures.****R35-1-1. Scheduling Committee Meetings.**

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The government entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the government entity contends they have not been identified with reasonable specificity, the government entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-7.8.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

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

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

(13) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the government entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the government entity's reasonable costs and expenses. The Committee will ordinarily deny a government entity's request to postpone the hearing, unless the government entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within five business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

KEY: government documents, state records committee, records appeal hearings

August 9, 2006

Notice of Continuation July 2, 2004

63G-2-502(2)(a)

R35. Administrative Services, Records Committee.**R35-1a. State Records Committee Definitions.****R35-1a-1. Definitions.**

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63G-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63G-2-205 and Subsection 63G-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63G-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63G-2-403(4)(a).

(e) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63G-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63G-2-403(11), Utah Code.

(g) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.

(h) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63G-2-403, Utah Code.

KEY: state records committee, records appeal hearings, government documents

March 8, 2005

63G-2-502(2)(a)

R35. Administrative Services, Records Committee.**R35-2. Declining Appeal Hearings.****R35-2-1. Authority and Purpose.**

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the Records Committee.

R35-2-2. Declining Requests for Hearings.

(a) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the chair of the Committee and at least one other member of the Committee as selected by the chair.

(b) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record does not exist, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record did exist at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The chair of the Committee shall determine whether or not the petitioner has provided sufficient evidence. If the chair of the Committee determines that sufficient evidence has been provided, the chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the chair of the Committee determines that sufficient evidence has not been provided, the chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the chair to direct the Executive Secretary to not schedule a hearing.

(c) In order to file an appeal the petitioner must submit a copy of their initial records requests, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(d) The chair of the Committee and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-402(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed and retained in the file.

(e) The Executive Secretary's notice to the petitioner indicating that the request for hearing has been denied, as provided for in Subsection 63G-2-403(4)(ii), Utah Code, shall include a copy of the previous order of the Committee holding the records series at issue appropriately classified.

(f) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(g) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: (1) whether the records being requested were covered by a previous order of the Committee, and/or (2) whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(h) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list

of all hearings held and all hearings declined.

KEY: government documents, state records committee, records appeal hearings

January 5, 2007

Notice of Continuation July 2, 2004

63G-2-403(4)

R35. Administrative Services, Records Committee.**R35-3. Prehearing Conferences.****R35-3-1. Authority and Purpose.**

In accordance with the general objectives of the Government Records Access and Management Act in facilitating access to records, and in keeping with the objectives of hearing procedures found in Section 63G-2-403, Utah Code, to resolve disputes, this rule authorizes and establishes the procedure for holding prehearing conferences.

R35-3-2. Scheduling Prehearing Conferences.

(a) In the process of planning and organizing efforts to execute appeals which are filed pursuant to Section 63G-2-403, the chair of the state records committee, at his or her discretion, may direct the disputing parties to appear before him or her, in person or telephonically, for a prehearing conference, to be held before any official appeals hearing, for such purposes as:

(1) encouraging exploration of areas of agreement, including stipulations; or

(2) facilitating settlement of the appeal.

(b) In the event that the issue, or issues scheduled for an appeals hearing are resolved at a prehearing conference, the committee chair shall report the settlement to the entire records committee at the next scheduled meeting for the purposes of creating a public record. Any stipulations shall be written and presented to the members of the records committee at the hearing.

KEY: government documents, state records committee, records appeal hearings

March 4, 2005

63G-2-502(2)(a)

Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.**R35-4. Compliance with State Records Committee Decisions and Orders.****R35-4-1. Authority and Purpose.**

In accordance with Subsection 63G-2-403(14) Utah Code, this rule intends to establish the procedure for complying with an order of the Records Committee.

R35-4-2. Notices of Compliance.

(a) The executive secretary of the state records committee shall send an order of the state records committee by certified mail to the governmental entity ordered to produce records.

(b) Pursuant to Subsection 63G-2-403(14), Utah Code, each governmental entity ordered to produce records by the records committee, shall file with the state records committee either a notice of compliance, or a copy of the appellant's notice of appeal of the records committee order, no later than the thirtieth day following the date of the state records committee order.

(c) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and the method and date of delivery.

(d) In the event a governmental entity fails to file a notice of compliance or a copy of the appellants notice of appeal of the records committee order within the time frame specified, the state records committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(e) The state records committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings

March 4, 2005

63G-2-502(2)(a)

Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.**R35-5. Subpoenas Issued by the Records Committee.****R35-5-1. Authority and Purpose.**

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the Records Committee.

R35-5-2. Subpoenas.

(a) In order to initiate a request for subpoena, a party shall file a written request with the chair of the state records committee at least 14 business days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the state records committee, the individual being subpoenaed must be present.

(b) The chair of the state records committee shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(1) a weighing of the proposed witness' testimony as material and necessary; or

(2) a weighing of the burden to the witness against the need to have the witness present.

(c) If the chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise in blank, from the executive secretary of the state records committee. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(d) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(e) A subpoenaed witness may file a motion to quash the subpoena with the executive secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied based on the same considerations as outlined in Subsection R35-5-3(b)(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the committee chair. The hearing may be in person, or by telephone, as determined by the committee chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(f) If the chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings

March 4, 2005

63G-2-502(2)(a)

Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.**R35-6. Expedited Hearing.****R35-6-1. Authority and Purpose.**

In accordance with Subsection 63G-2-403(4)(a), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(a) A party appealing a records designation to the Committee may request that a hearing be scheduled to hear the appeal prior to 14 days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(b) A written request shall include the reason(s) the request is being made.

(c) The Executive Secretary shall consult with the chair of the Committee to decide whether an Expedited Hearing is warranted.

(d) The standard for granting an Expedited Hearing is "good cause shown." The chair shall take into account the reason for the request, and balance that against the burden to the Committee and the government entity.

R35-6-3. Scheduling the Expedited Hearing.

(a) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(b) After settling on a date no sooner than 5 days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and government entity and schedule the hearing.

(c) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

(a) With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings

March 4, 2005

63G-2-502(2)

Notice of Continuation July 2, 2004

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

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

R81-1-2. Definitions.

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

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

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

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

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

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

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

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

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

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

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

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

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

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

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

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

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

(17) "RESPONDENT" means a department licensee, or

permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

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

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

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

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

R81-1-3. General Policies.

(1) Official State Label.

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

(2) Labeling.

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

(3) Manner of Paying Fees.

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

(4) Copy of Commission Rules.

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

(5) Interest Assessment on Delinquent Accounts.

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

(6) Returned Checks.

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

- (i) insufficient funds;
- (ii) refer to maker; or
- (iii) account closed.

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

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

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

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

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

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

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

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

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

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to 18 consecutive months from the date the department received notice of the returned check;

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

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

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

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

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

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

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

(d) In addition to the remedies listed in Subsections (6)(a),

(b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(7) Disposition of unsaleable merchandise.

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

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

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

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

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

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

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

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

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

R81-1-6. Violation Schedule.

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

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

(3) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Second occurrence of any type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The

penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Frequency

Minor					
1st	X	X			
2nd			100 to	500	
3rd			200 to	500	1 to 5
Over 3			500 to	25,000	6 to X
Moderate					
1st		X		to 1,000	
2nd			500 to	1,000	3 to 10
3rd			1,000 to	2,000	10 to 20
Over 3			2,000 to	25,000	15 to X
Serious					
1st			500 to	3,000	5 to 30
2nd			1,000 to	9,000	10 to 90
Over 2			9,000 to	25,000	15 to X
Grave					
1st			1,000 to	25,000	10 to X
Over 1			3,000 to	25,000	15 to X

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

TABLE

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

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

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (2007 edition) and is incorporated by reference as part of this rule.

TABLE

Violation Degree and	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days	Revoke License
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R81-1-7. Disciplinary Hearings.**(1) General Provisions.**

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

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

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

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

(e) Penalties.

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

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

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

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

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

address of the respondent or any of the following:

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

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

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

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

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

(j) Presiding Officers.

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

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

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

(m) Default.

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

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

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

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

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

(2) Pre-adjudication Proceedings.

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

(c) Commencement of Adjudicative Proceedings.

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

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

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

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

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

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

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

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The department's case number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The Prehearing Conference.

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

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

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

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

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

the license, permit, or certificate of approval for the alleged violation(s).

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

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

(c) The Informal Hearing.

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

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

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

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

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

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

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

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

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

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

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

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

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

(viii) Intervention is prohibited.

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

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

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

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

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

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

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

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

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

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

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

(d) Disposition.

(i) Presiding Officer's Order; Objections.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

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

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in

the notice of agency action, and in no event may it recommend administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

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

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

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

(ii) Commission Action.

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

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

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

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

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

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

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

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

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

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

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

(e) Judicial Review.

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

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

(4) The Formal Process.

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

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

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

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

(A) the case number assigned to the action;

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

(C) the name of the respondent;

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

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

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

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

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

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

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

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

(b) Intervention.

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

(A) the agency's case number;

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

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

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

granted. The response must be presented or filed at or before the hearing.

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

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

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

(iv) Order Requirements.

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

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

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

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

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

(c) Discovery and Subpoenas.

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

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

(d) The Formal Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Disposition.

(i) Presiding Officer's Order; Objections.

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

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

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

(ii) Commission Action.

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

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

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

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

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

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

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

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

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

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

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

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

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

(f) Judicial Review.

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

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

R81-1-8. Consent Calendar Procedures.

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

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

(a) Uncontested letters of admonishment where no written

objections have been received from the respondent; and

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

(3) Application of the Rule.

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

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

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

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

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

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

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

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

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

R81-1-9. Liquor Dispensing Systems.

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

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

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

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

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

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

(3) Method of approval.

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

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

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

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

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

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

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

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

(e) All dispensing systems and devices must

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

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

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

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

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

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

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

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

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

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

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

(j) A licensee or his employee shall not:

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

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

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

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

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

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

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(41) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(53) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

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

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) date of hire, and

(b) date of completion of training.

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

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

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

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

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

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

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

(3) Definitions.

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

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

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

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

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

(4) Filing of Complaints.

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

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

(c) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desire; and

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

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

(5) Investigation of Complaint.

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

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

(6) Issuance of Decision.

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

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

(7) Appeals.

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

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

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

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

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

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

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

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

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

R81-1-15. Commission Declaratory Orders.

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

(2) Petition Procedure.

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

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

(3) Petition Form. The petition shall:

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

order;

- (b) identify the statute, rule, or order to be reviewed;
 - (c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;
 - (d) describe the reason or need for the applicability review;
 - (e) identify the person or agency directly affected by the statute, rule, or order;
 - (f) include an address and telephone number where the petitioner can be reached during regular work days; and
 - (g) be signed by the petitioner.
- (4) Petition Review and Disposition.
- (a) The commission shall:
 - (i) review and consider the petition;
 - (ii) prepare a declaratory order stating:
 - (A) the applicability or non-applicability of the statute, rule, or order at issue;
 - (B) the reasons for the applicability or non-applicability of the statute, rule, or order; and
 - (C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;
 - (iii) serve the petitioner with a copy of the order.
 - (b) The commission may:
 - (i) interview the petitioner;
 - (ii) hold an informal adjudicative hearing to gather information prior to making its determination;
 - (iii) hold a public information-gathering hearing on the petition;
 - (iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and
 - (v) take any other action necessary to provide the petition adequate review and due consideration.

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

- (1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:
 - (a) a felony under any federal or state law;
 - (b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
 - (c) any crime involving moral turpitude; or
 - (d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.
- (2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):
 - (a) a partner;
 - (b) a managing agent;
 - (c) a manager;
 - (d) an officer;
 - (e) a director;
 - (f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
 - (g) a member who owns at least 20% of the limited liability company.
- (3) As used in the Act and these rules:
 - (a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;
 - (b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and
 - (c) a "crime involving moral turpitude" means a crime that

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

R81-1-17. Advertising.

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

(2) Definitions.

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

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

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

(3) Application.

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

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

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

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

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

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

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

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

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

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

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

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

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

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

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

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

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

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

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

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

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

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

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

(m) May not offer alcoholic beverages without charge;

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

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

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

104 and -401.

R81-1-19. Emergency Meetings.

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

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

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

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

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

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

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

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

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

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

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

R81-1-20. Electronic Meetings.

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

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

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

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

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be

provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

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

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

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

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

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

(2) Purpose.

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

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

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail

concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

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

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

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

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

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

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

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

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

(g) The industry member may not share in the costs or

contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

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

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

(b) Purchases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Application of Rule.

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

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

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

R81-1-24. Responsible Alcohol Service Plan.

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

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

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control

Commission.

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

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

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

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

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

(i) over-serving alcoholic beverages to customers;

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

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

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

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

(4) Application of Rule.

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

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

(b) Any Plan at a minimum shall:

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

(A) prevent over-service of alcohol;

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

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

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

(E) deal with hostile customers;

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

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

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

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

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

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

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

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

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

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

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

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

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

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

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

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

(1) Authority. This rule is pursuant to:

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

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

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

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

(3) Definitions.

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

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

(4) Application of Rule.

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

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

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire

and conduct restrictions of 32A-1-602 and -603;

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

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

(c) Stage and designated performance area requirements.

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

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

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

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

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

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

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

(I) touching the sexually-oriented entertainer;

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

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

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

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

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

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

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

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

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

(b) 32A-1-111, 32A-2-101(1)(b), 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons that have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32A-1-107 through 704 that allow for the department to require criminal history background check reports on certain

individuals.

(2) Purpose. This rule:

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

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

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

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

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

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

(vii) An applicant for employment with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

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

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

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

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the F.B.I.;

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

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

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

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

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

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

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

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

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

(h) An applicant for employment with the department that requires an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the F.B.I.;

(iii) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32A-1-806(2)(c) and (d) and 32A-1-807 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32A-1-804, effective October 1, 2008, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first

approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32A-1-804 to -806.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of \$30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32A-1-805(6):

(i) the department may revoke any label and packaging approved by the department prior to October 1, 2008, that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32A-1-806, effective October 1, 2008, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains

alcohol". The words in the statement must appear:

- (i) in capital letters and bold type;
- (ii) in a solid contrasting background;
- (iii) on the front of the container and packaging;
- (iv) in a format that is readily legible;
- (v) separate and apart from any descriptive or explanatory information; and
- (vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32A-1-806, effective October 1, 2008, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

- (i) in capital letters and bold type;
- (ii) in a solid contrasting background;
- (iii) in a format that is readily legible; and
- (iv) separate and apart from any descriptive or explanatory information.

KEY: alcoholic beverages

September 1, 2008

Notice of Continuation August 31, 2006

32A-1-107
 32A-1-119(5)(c)
 32A-1-807
 32A-3-103(1)(a)
 32A-4-103(1)(a)
 32A-4-106(22)
 32A-4-203(1)(a)
 32A-4-304(1)(a)
 32A-4-307(22)
 32A-4-401(1)(a)
 32A-4-403(1)(a)
 32A-5-103(1)(a)
 32A-5-107(40)
 32A-6-103(2)(a)
 32A-7-103(2)(a)
 32A-7-106(5)
 32A-8-103(1)(a)
 32A-8-503(1)(a)
 32A-9-103(1)(a)
 32A-10-203(1)(a)
 32A-10-206(14)
 32A-10-303(1)(a)
 32A-10-306(5)
 32A-11-103(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-31b. Nurse Practice Act Rule.****R156-31b-101. Title.**

This rule is known as the "Nurse Practice Act Rule".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Academic year", as used in Section R156-31b-601, means three quarters or two semesters. A quarter is defined to be equal to ten weeks and a semester is defined to be equal to 14 or 15 weeks.

(2) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(3) "APRN" means an advanced practice registered nurse.

(4) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

(5) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Subsection R156-31b-102(6); and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program located within the state of Utah which meets the standards established in Sections R156-31b-601, 602 and 603; and any nursing education program located outside of Utah which meets the standards established in Section R156-31b-607.

(7) "CCNE" means the Commission on Collegiate Nursing Education.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "COA", as used in this rule, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical preceptor", as used in Section R156-31b-608, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent Nursing Education-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(11) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient conditions as well as emergent changes in patient's health status; recognizing alterations to previous patient conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's condition; evaluating the impact of

nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(12) "Contact hour" means 60 minutes.

(13) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.

(14) "Delegation" means transferring to delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.

(15) "Delegation", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

(16) "Diabetes medical management plan (DMMP)", as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DMMP shall be incorporated into and shall become a part of the student's IHP.

(17) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to prescribing a prescription drug.

(18) "Disruptive behavior", as used in this rule, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(19) "Equivalent to an approved practical nursing education program", as used in Subsection 58-31b-302(2)(e), means the applicant for licensure as an LPN by equivalency is currently enrolled in an RN education program with full approval status, and has completed course work which is equivalent to the course work of an NLNAC accredited practical nursing program.

(20) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(21) "Individualized healthcare plan (IHP)", as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.

(22) "Licensure by equivalency" as used in this rule means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

(23) "LPN" means a licensed practical nurse.

(24) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

(25) "NLNAC" means the National League for Nursing Accrediting Commission.

(26) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(27) "Non-approved education program" means any foreign nurse education program.

(28) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

(29) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

(30) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

- (a) advanced practice registered nurse;
- (b) certified nurse midwife;
- (c) chiropractic physician;
- (d) dentist;
- (e) osteopathic physician;
- (f) physician assistant;
- (g) podiatric physician;
- (h) optometrist;
- (i) naturopathic physician; or
- (j) mental health therapist as defined in Subsection 58-60-102(5).

(31) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

(32) "Parent nursing education-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(33) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

(34) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(35) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(36) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

(37) "RN" means a registered nurse.

(38) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

(39) "Supervision", as used in Sections R156-31b-701 and 701a, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

(40) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

(41) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 31b.

R156-31b-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.

R156-31b-201. Board of Nursing - Membership.

In accordance with Subsection 58-31b-201(1), nurses serving as members of the Board shall be:

- (1) six registered nurses, two of whom are actively involved in nursing education;
- (2) one licensed practical nurse; and
- (3) two advanced practice registered nurses.

R156-31b-202. Advisory Peer Committee created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Psychiatric Mental Health Nursing Peer Committee and the Nursing Education Peer Committee.

(2) Psychiatric Mental Health Nursing Peer Committee.

(a) The duties and responsibilities of the Psychiatric Mental Health Nursing Peer Committee are to:

(i) review applications for licensure as an APRN specializing in psychiatric mental health nursing when appropriate; and

(ii) advise the board and division regarding practice issues.

(b) The composition of the Psychiatric Mental Health Nursing Peer Committee shall be:

(i) three APRNs specializing in psychiatric mental health nursing;

(ii) at least one member shall be a faculty member actively teaching in a psychiatric mental health nursing program; and

(iii) at least one member shall be actively participating in the supervision of an APRN intern.

(3) Nursing Education Peer Committee.

(a) The duties and responsibilities of the Nursing Education Peer Committee are to:

(i) review applications for approval of nursing education programs;

(ii) advise the board and division regarding standards for approval of nursing education programs; and

(iii) assist the board and division to conduct site visits of nursing education programs.

(b) The composition of the Nursing Education Peer Committee shall be:

(i) five RNs or APRNs actively involved in nursing education; and

(ii) members of the board may also serve on this committee.

R156-31b-301. License Classifications - Professional Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302(2)(e) and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure as a LPN by equivalency shall submit written verification from a registered nurse education program with full approval status, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs who are not currently licensed in another state shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools for an applicant who is applying for licensure as a registered nurse; or

(b) Foundation for International Services, Inc. for an applicant who is applying for licensure as a licensed practical nurse.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing in Psychiatric Mental Health Nursing.

(1) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice (including mental health therapy).

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(b) The remaining 3,000 hours shall:

(i) include a minimum of 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental therapy services provided;

(ii) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(iii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3).

(c) At least 2,000 hours must be under the supervision of an APRN specializing in psychiatric mental health nursing. An APRN working in collaboration with a licensed mental health therapist may delegate selected clinical experiences to be supervised by that mental health therapist with general supervision by the APRN.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to

practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(4)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) An applicant for licensure under Title 58, Chapter 31b shall pass the applicable licensure examination within three years from the date of completion or graduation from a nursing education program or four attempts whichever is sooner. An individual who does not pass the applicable licensure examination within three years of completion or graduation or four attempts is required to complete another approved nursing education program.

(2) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with the applicant's educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing; or

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

(vi) one of the following examinations administered by the American Association of Critical Care Nurses Certification Corporation Inc.:

(A) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or

(B) the Acute Care Nurse Practitioner Certification;

(vii) the national nurse midwifery certifying examination administered by the Accreditation Commission for Midwifery Education; or

(viii) the examination of the Council on Certification of Nurse Anesthetists.

(3) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

(4) The examinations required under this Section are national exams and cannot be challenged before the Division.

R156-31b-302d. Qualifications for Licensure - Criminal

Background Checks.

(1) In accordance with Subsection 58-31b-302(5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

- (a) a visa issued within six months of making application to Utah; or
- (b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

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

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) A LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

- (i) licensed practice for not less than 400 hours;
- (ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or
- (iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

- (i) be currently certified or recertified in their specialty area of practice; or
- (ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

R156-31b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the division may issue a temporary license to a person who meets all qualifications for licensure as either an LPN or RN, except for the passing of the required examination, if the applicant:

- (a) is a graduate of or has completed a Utah-based, nursing education program with full approval status within two months immediately preceding application for licensure;
- (b) has never before taken the specific licensure examination;
- (c) submits to the division evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a fully licensed registered nurse; and
- (d) has registered for the appropriate NCLEX examination.

(2) The temporary license issued under Subsection (1) expires the earlier of:

- (a) the date upon which the division receives notice from the examination agency that the individual failed the examination;
- (b) 90 days from the date of issuance; or
- (c) the date upon which the division issues the individual full licensure.

(2) A temporary license issued in accordance with Section 58-1-303 to a graduate of a foreign nursing education program may be issued for a period of time not to exceed one year from the date of issuance and shall not be renewed or extended.

R156-31b-306. Inactive Licensure, Reinstatement or Relicensure.

(1) In accordance with Subsection 58-1-305(1), an individual seeking activation of an inactive RN or LPN license must document current competency to practice as a nurse as

defined in Subsection (3) below.

(2) An individual seeking reinstatement of RN or LPN licensure or relicensure as a RN or LPN in accordance with Subsection R156-1-308g(3)(b), R156-1-308i(3), R156-1-308j(3) and R156-1-308k(2)(c) shall document current competence as defined in Subsection (3) below.

(3) Documentation of current competency to practice as a nurse is established as follows:

(a) an individual who has not practiced as a nurse for five years or less must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) an individual who has not practiced as a nurse for more than five years but less than eight years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure or successfully complete an approved re-entry program;

(c) an individual who has not practiced as a nurse for more than eight years but less than 10 years must pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure and successfully complete an approved re-entry program;

(d) an individual who has not practiced as a nurse for 10 years shall repeat an approved nursing education program and pass the required examinations as defined in Section R156-31b-302c within six months prior to making application for licensure.

(4) To document current competency for activation, reinstatement or relicensure as an APRN, an individual must pass the required examinations as defined in Section R156-31b-302c and be currently certified or recertified in the specialty area.

R156-31b-307. Reinstatement of Licensure.

(1) In accordance with Section 58-1-308 and Subsection R156-1-308g(3)(b), an applicant for reinstatement of a license which has been expired for five years or less, shall document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) The Division may waive the reinstatement fee for an individual who was licensed in Utah and moved to a Nurse Licensure Compact party state, who later returns to reside in Utah.

R156-31b-308. Exemption from Licensure.

In accordance with Subsections 58-1-307(1) and 58-31b-308(1)(a), an individual who provides up to 48 consecutive hours of respite care for a family member, with or without compensation, is exempt from licensure.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire the earlier of:

(a) 90 days from the date of issuance, unless the applicant is applying for licensure as an APRN specializing in psychiatric mental health nursing, then the intern license shall be issued for a period of one year and can be extended in one year increments not to exceed five years;

(b) 30 days after notification from the applicant or the examination agency, if the applicant fails the examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(3) It is the professional responsibility of the APRN Intern to inform the Division of examination results and to cause to have the examination agency send the examination results directly to the Division.

R156-31b-310. Licensure by Endorsement.

(1) In accordance with Section 58-1-302, an individual who moves from a Nurse Licensure Compact party state does not need to hold a current license, but the former home state license must have been in good standing at the time of expiration.

(2) An individual under Subsection (1) who has not been licensed or practicing nursing for three years or more is required to retake the licensure examination to demonstrate good standing within the profession.

(3) An applicant for licensure by endorsement must have a current, active license in another state, or pass the required examinations as defined in Section R156-31b-302c, within six months prior to making application for licensure.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended, may under Subsection 58-31b-401 petition the division at any time that the licensee can demonstrate that the licensee can resume competent practice.

(3) An individual who has had any license issued under Title 58, Chapter 31b revoked or surrendered two times or more as a result of unlawful or unprofessional conduct is ineligible to apply for relicensure.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

- (1) Using a protected title:
initial offense: \$100 - \$300
subsequent offense(s): \$250 - \$500
- (2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:
initial offense: \$50 - \$250
subsequent offense(s): \$200 - \$500
- (3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: \$1,000 - \$3,000
subsequent offense(s): \$5,000 - \$10,000
- (4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (5) Impersonating a licensee, or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (6) Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (7) Knowingly permitting the use of a license by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000
- (8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(20) Failure to safeguard a patient's right to privacy:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(22) Engaging in sexual relations with a patient:
initial offense: \$5,000 - \$10,000
subsequent offense(s): \$10,000

(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000

(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000

(26) Knowingly entering false or misleading information into a medical record or altering a medical record:

- initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (27) Unlawful or inappropriate delegation of nursing care:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (28) Failure to exercise appropriate supervision:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (30) Failure to file or impeding the filing of required reports:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (31) Breach of confidentiality:
 initial offense: \$200 - \$1,000
 subsequent offense(s): \$500 - \$2,000
- (32) Failure to pay a penalty:
 Double the original penalty amount up to \$10,000
- (33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$500 - \$2,000
- (34) Failure to confine practice within the limits of competency:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$500 - \$2,000
- (35) Any other conduct which constitutes unprofessional or unlawful conduct:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (36) Engaging in a sexual relationship with a patient surrogate:
 initial offense: \$1,000 - \$5,000
 subsequent offense(s): \$5,000 - \$10,000
- (37) Engaging in practice in a disruptive manner:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000.

R156-31b-502. Unprofessional Conduct.

- (1) "Unprofessional conduct" includes:
- (a) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;
- (b) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law;
- (c) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
- (i) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;
- (ii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;
- (iii) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;
- (d) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
- (i) did not result in any form of abuse or exploitation of the surrogate or patient; and
- (ii) did not adversely alter or affect in any way:
- (A) the nurse's professional judgment in treating the patient;
- (B) the nature of the nurse's relationship with the

surrogate; or

- (C) the nurse/patient relationship; and
- (e) engaging in disruptive behavior in the practice of nursing.

(2) In accordance with a prescribing practitioner's order and an IHP, a nurse who follows the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a and delegates or trains an unlicensed assistive personnel to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-601. Standards for Parent Academic Institution Offering Nursing Education Program.

In accordance with Subsection 58-31b-601(2), the minimum standards that a parent academic institution offering a nursing education program must meet to qualify graduates for licensure under this chapter are as follows.

(1) The parent academic institution shall be legally authorized by the State of Utah to provide a program of education beyond secondary education.

(2) The parent academic institution shall admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.

(3) At least 20 percent of the parent academic institution's revenue shall be from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(4) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an LPN shall:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), Council on Occupational Education, or the Accrediting Commission of the Distance Education and Training Council (DETC); and

(b) provide not less than one academic year program of study that leads to a certificate or recognized educational credential.

(5) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an RN shall:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), or the Accrediting Commission of the Distance Education and Training Council (DETC); and

(b) provide or require not less than a two academic year program of study that awards a minimum of an associate degree.

(6) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an APRN or APRN-CRNP shall:

(a) be accredited or preaccredited regionally by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education;

(b) admit as students, only persons having completed at least an associate degree in nursing or baccalaureate degree in

a related discipline; and

(c) provide or require not less than a two academic year program of study that awards a minimum of a master's degree.

R156-31b-602. Categories of Nursing Education Programs Approval Status.

(1) Full approval status of a nursing program shall be granted and maintained by adherence to the following:

(a) current accreditation by the NLNAC, CCNE, or COA; and

(b) compliance with the standards established in Sections R156-31b-601 and 603 and the nurse accrediting body in which the program chooses to become accredited.

(2) The Division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(3) The Division may grant provisional approval status to a nursing education program for a period not to exceed two years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards established in Sections R156-31b-601 and 603; and

(d) is progressing in a timely manner to qualify for full approval status by obtaining accreditation from a nurse accrediting body.

(4)(a) A nursing education program seeking accreditation from NLNAC shall demonstrate progression toward accreditation and qualifying for full approval status by becoming a Candidate for Accreditation by the NLNAC no later than six months from the date of the first day a nursing course is offered.

(b) A program that fails to obtain NLNAC Candidacy Status as required in this Subsection shall:

(i) immediately cease accepting any new students;

(ii) the approval status of the program shall be changed to "Probationary" and if the program fails to become a Candidate for NLNAC accreditation within one year from the date of the first day a nursing course is offered, the program shall cease operation at the end of the current academic term such as at the end of the current semester or quarter; and

(iii) a nursing education program that ceases operation under this Subsection, is eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

(5) A nursing education program that has been granted provisional approval status and fails to become accredited by a nurse accrediting body within two years of the first graduating class, shall cease operation at the end of the two year period of time and the academic term, such as a semester or quarter, of that time period.

(6) After receiving notification from a nurse accrediting body of a failed site visit or denied application for accreditation by the nurse accrediting body, a nursing education program on provisional approval status shall:

(i) notify the Division and Board within 10 days of being notified of the failed site visit or denied application for accreditation;

(ii) cease operation at the end of the current academic term; and

(iii) be eligible to submit a new application for approval status of a nursing education program to the Division for review

and action no sooner than one calendar year from the date the program ceased operation.

(7)(a) A nursing education program on provisional approval status shall schedule a nurse accreditation site visit no later than one calendar year from the graduation date of the first graduating class.

(b) A program that fails to schedule a site visit within one year of the first graduating class shall:

(i) cease to accept any new students;

(ii) no later than two years after the first graduating class, cease operation; and

(iii) if ceasing operation under this Subsection, be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

R156-31b-603. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth as follows.

(1) A nursing education program shall meet the following standards:

(a) purposes and outcomes shall be consistent with the Nurse Practice Act and Rule and other relevant state statutes;

(b) purposes and outcomes shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(c) consumer input shall be considered in developing and evaluating the purpose and outcomes of the program;

(d) the program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse, integrated didactic and clinical learning experiences across the lifespan, consistent with program outcomes;

(f) the faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be professionally and academically qualified as a registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program shall meet all the criteria established in this rule;

(l) the program shall be an integral part of a parent academic institution which is accredited by an accrediting body that is recognized by the U.S. Secretary of Education; and

(m) the program shall require students to obtain general education, pre-requisite, and co-requisites courses from a regionally accredited institution of higher education, or have in place an articulation agreement with a regionally accredited institution of higher education.

(2) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

(a) students' achievement of program outcomes;

(b) evidence of adequate program resources including fiscal, physical, human, clinical and technical learning

resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;

(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;

(d) evidence that accurate program information for consumers is readily available;

(e) evidence that the head of the academic institution and the administration support program outcomes;

(f) evidence that the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and

(g) evidence that the academic institution assures security of student information.

(3) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;

(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;

(c) learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan;

(d) coursework including, but not limited to:

(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(ii) didactic content integrated with supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and in a variety of clinical settings, to include:

(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;

(B) employing evidence-based practice to integrate best research with clinical expertise and patient values for optimal care, including skills to identify and apply best practices to nursing care;

(C) providing patient-centered, culturally competent care:

(1) respecting patient differences, values, preferences and expressed needs;

(2) involving patients in decision-making and care management;

(3) coordinating and managing continuous patient care; and

(4) promoting healthy lifestyles for patients and populations;

(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate patient care and health promotion; and

(E) participating in quality improvement processes to measure patient outcomes, identify hazards and errors, and develop changes in processes of patient care;

(e) supervised clinical practice which includes development of skill in making clinical judgments, management and care of groups of patients, experience with interdisciplinary teamwork, working with families in the provision of care, managing crisis situations, and delegation to and supervision of other health care providers:

(i) clinical experience shall be comprised of sufficient hours, shifts, variety of populations, and hands-on practice to meet these standards, and ensure students' ability to practice at an entry level;

(ii) no more than 25% of the clinical hours can be obtained in a nursing skills laboratory, or by clinical simulation or virtual clinical excursions;

(iii) all student clinical experiences, including those with preceptors, shall be supervised by qualified nursing faculty at a ratio of not more than 10 students to one faculty member unless the experience includes students working with preceptors who can be supervised at a ratio of not more than 15 students to one faculty member; and

(iv) nursing faculty, must be on-site with students during all fundamental, medical-surgical and acute care clinical experiences;

(f)(i) clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has completed didactic and clinical instruction in all foundational courses including introduction to nursing, fundamentals, medical-surgical, obstetrics, and pediatrics. Therefore, clinical preceptors shall not be utilized in LPN nursing programs.

(ii) a clinical preceptor shall:

(A) demonstrate competencies related to the area of assigned clinical teaching responsibilities;

(B) serve as a role model and educator to the student;

(C) be licensed as a nurse at or above the level for which the student is preparing;

(D) not be used to replace clinical faculty;

(F) be provided with a written document defining the functions and responsibilities of the preceptor;

(G) confer with the clinical faculty member and student for monitoring and evaluating learning experiences, but the clinical faculty member shall retain responsibility for student learning; and

(H) not supervise more than two students during any one scheduled work time or shift; and

(g) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division.

(4) Students rights and responsibilities:

(a) opportunities to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight shall be provided to students;

(b) all policies shall be written and available to students;

(c) students shall be required to meet the health standards and criminal background checks as required in Utah;

(d) students shall receive faculty instruction, advisement and oversight;

(e) students shall maintain the integrity of their work;

(f)(i) an applicant accepted into a nursing education program that has received provisional approval status from the Division, must sign a disclaimer form indicating the applicant's knowledge of the provisional approval status of the program, and the lack of a guarantee that the program will achieve national nursing accreditation and full approval status from the Division; and

(ii) the disclaimer shall also contain a statement regarding the lack of a guarantee that the credit received from the provisionally approved program will be accepted by or transferable to another educational facility; and

(g) an applicant accepted into a nursing education program or a student of a nursing education program that is on or receives probationary approval status from the Division, must sign a disclaimer form indicating the applicant or student has knowledge of the program's probationary approval status, and the lack of a guarantee that the program will maintain any approval status or will be able to offer the complete program.

(5) An administrator of a nursing education program shall meet the following requirements:

(a) a program preparing an individual for licensure as an

LPN:

- (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
- (ii) have a minimum of an earned graduate degree with a major in nursing, or a baccalaureate degree in nursing and an earned doctoral degree in a related discipline from a nurse accredited education program or regionally accredited institution;
- (iii) have academic preparation in curriculum and instruction;
- (iv) have at least three years of experience teaching in an accredited nursing education program;
- (v) have knowledge of current LPN practice; and
- (vi) have adequate time to fulfill the role and responsibilities of a program administrator;

(b) a program preparing an individual for licensure as an RN:

- (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
- (ii)(A) associate degree program: have a minimum of an earned graduate degree with a major in nursing from a nurse accredited education program;
- (B) baccalaureate degree program: have a minimum of an earned graduate degree in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;
- (iii) have academic preparation in curriculum and instruction;
- (iv) have at least three years of experience teaching in an accredited nursing education program;
- (v) have knowledge of current RN practice; and
- (vi) have adequate time to fulfill the role and responsibilities of a program administrator;

(c) a program preparing an individual for licensure as an APRN:

- (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
- (ii) have a minimum of an earned graduate degree with a major in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;
- (iii) have academic preparation in curriculum and instruction;
- (iv) have at least three years of experience teaching in an accredited nursing education program;
- (v) have knowledge of current nursing practice;
- (vi) have adequate time to fulfill the role and responsibilities of a program administrator; and
- (v) if the program administrator is not a licensed APRN, then the program must also have a director that meets the qualifications of Subsection (d) below;
- (d) the director of a graduate program preparing an individual for licensure as an APRN shall meet the following requirements:

- (i) have a current, active, unencumbered APRN license or multistate privilege to practice as an APRN in Utah;
- (ii) have a minimum of an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program;
- (iii) have educational preparation in curriculum and instruction;
- (iv) have at least three years of experience teaching in an accredited nursing education program;
- (v) have knowledge of current APRN practice; and
- (vi) have adequate time to fulfill the role and responsibilities of a program director.

(6) The qualifications for nursing faculty who teach didactic, clinical, or in a skills practice laboratory, in a nursing education program shall include:

(a) a program preparing an individual for licensure as an LPN:

- (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
- (ii) have a baccalaureate degree in nursing or an earned graduate degree with a major in nursing from a nurse accredited program, the majority of faculty (at least 51%) shall have an earned graduate degree with a major in nursing from a nurse accredited program;
- (iii) have at least two years of clinical experience;
- (iv) (A) have educational preparation in curriculum and instruction; or
- (B) have at least three years of experience teaching in an accredited nursing education program; and
- (v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(b) a program preparing an individual for licensure as an RN:

- (i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;
- (ii) have an earned graduate degree with a major in nursing from a nurse accredited program or be currently enrolled in a graduate level accredited nursing education program with graduation from the program no later than three years from the date of hire;
- (iii) have at least two years of clinical experience;
- (iv) (A) have educational preparation in curriculum and instruction; or
- (B) have at least three years of experience teaching in an accredited nursing education program; and
- (v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(c) a program preparing an individual for licensure as an APRN:

- (i) have a current, active, unencumbered APRN license or multistate privilege to practice nursing in Utah;
- (ii) have an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program or regionally accredited institution; the majority of the faculty shall have an earned doctorate from a regionally accredited institution;
- (iii) have at least two years of clinical experience practicing as an APRN;
- (iv)(A) have educational preparation in curriculum and instruction; or
- (B) have at least three years of experience teaching in an accredited nursing education program; and
- (v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above.

(7) At the time this Rule becomes effective, any currently employed nursing faculty member who does not meet the criteria established in Subsection (6), shall have until July 1, 2011 to meet the criteria.

(8) Adjunct clinical faculty, except clinical associates, employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching. A clinical associate is a staff member of a health care facility with an earned graduate degree or a student currently enrolled in a graduate nursing education program, who is given release time from the facility to provide clinical supervision to other students. The clinical associate is supervised by a graduate prepared mentor faculty member.

(9) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(10) A nursing education program preparing graduates for

licensure as either an LPN or RN must maintain an average pass rate on the applicable NCLEX examination that is no more than 5% below the national average pass rate for the same time period.

(11) A program that has received full approval status from the Division in collaboration with the board and is accredited by either CCNE or NLNAC:

(a) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles or over a two year period of time, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation, and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs four times either after four consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after five consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases to operate under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(12) A program that has been granted provisional approval status by the Division in collaboration with the Board, but has not received either CCNE or NLNAC accreditation:

(a) if a low NCLEX pass rate occurs after any one graduation cycle, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles, or a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after four consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases operation under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(13) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) the curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate level advanced practice nursing core courses

including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(ii) coursework focusing on the APRN role and specialty;

(c) dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties;

(d) instructional track/major shall have a minimum of 500 hours of supervised clinical experience directly related to the recognized APRN role and specialty;

(e) specialty tracks that provide care to multiple age groups and care settings shall require additional hours distributed in a manner that represents the populations served;

(f) there shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty;

(g) post-masters nursing students shall complete the requirements of the APRN masters program through a formal graduate level certificate or master level track in the desired role and specialty;

(i) a program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area; and

(ii) post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours; and

(h) a lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing an APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-604. Nursing Education Program - Disciplinary Action.

(1) The Division, in collaboration with the Board, may conduct an administrative hearing or issue a Memorandum of Understanding and Order placing a nursing program on probationary status for any of the following reasons:

(a) change in nurse accreditation status;

(b) failure to maintain the standards established by the nurse accreditation bodies such as receiving significant deficiencies during a review as evidenced by conditions being placed on the program;

(c) failure to maintain the standards established in this rule;

(d) pass rate of more than 5% below the national average;

(e) low graduation rate defined as the percent of first-time, degree seeking students who graduate longer than 150% of the designated time for graduation;

(f) sudden, high, or frequent faculty attrition;

(g) frequent program administrator turnover;

(h) national certification pass rate less than 80%; and

(i) implementation of a new education program, or an outreach or satellite nursing education program without prior notification to the Division.

(2) The Division, in collaboration with the Board, may take any of the following actions upon a nursing education program:

(a) issue an Order changing the approval status of the program;

(b) limit or restrict enrollment of new students or require the program to cease accepting new students within a specified timeframe;

(c) require the program director to meet with the Board or its designee, and present a remediation plan to correct any problems within a specified time frame;

(d) establish specific criteria that must be met within a

specific length of time;

- (e) withdraw approval status; or
- (f) issue a cease and desist Order.

(3) Any adjudicative proceeding in regards to a nursing education program shall be classified as a formal adjudicative proceeding and shall comply with Title 63G, Chapter 4, the Utah Administrative Procedures Act.

R156-31b-605. Nursing Education Program Notification of Change.

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the division for approval status at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

R156-31b-606. Nursing Education Program Surveys.

(1) The Division shall conduct an annual survey of nursing education programs to monitor compliance with this rule. The survey may include the following:

- (a) a copy of the program's annual report to a nurse accrediting body;
- (b) a copy of any changes submitted to any nurse accrediting body; and
- (c) a copy of any accreditation self study summary report.

(2) Programs which have been granted provisional approval status shall submit to the Division a copy of all correspondence between the program and the nurse accrediting body within 10 days of receipt or submission.

R156-56-607. Approved Nursing Education Programs Located Outside of Utah.

(1) In accordance with Section 58-31b-302, an approved nursing education program located outside of Utah must meet the following requirements in order for a graduate to meet the educational requirement for licensure in this state:

- (a) be accredited by the CCNE, NLNAC or COA; or
- (b) be approved by the Board of Nursing or an equivalent agency in the state in which the nursing education program is offered.

R156-31b-608. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows.

(1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

- (a) parent nursing education-program must be Board of Nursing approved in the state of primary location (business), be nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;
- (b) parent nursing education-program clinical faculty supervisor must be licensed in Utah or a Compact state;
- (c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;
- (d) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and
- (e) parent nursing education-program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(c).

(2) A nursing education program located in another state that desires to use Utah health care facilities for clinical

experiences for one or more students must meet the following criteria:

(a) be approved by the home state Board of Nursing, be nationally accredited by NLNAC, CCNE, or COA and be affiliated with an institution of higher education;

(b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

(d) have a contract with the Utah health care facilities that provide the clinical sites;

(e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

(f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(c).

(3) A distance learning didactic nursing education program with a Utah based postsecondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

(a) parent nursing education-program must be approved by the Board of Nursing in the state of primary location (business), be nationally accredited by NLNAC, CCNE, or COA and must be affiliated with an institution of higher education;

(b) a formal contract must be in place between the parent nursing education-program and the Utah postsecondary school;

(c) parent nursing education-program and Utah postsecondary school must submit an application for program approval status by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent-program's existing curriculum. Approval status is granted to the parent nursing education-program, not to the postsecondary school;

(d) clinical faculty must be employed by the parent nursing education-program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent nursing education-program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(e) clinical faculty supervisor(s) located at the parent nurse education-program must be licensed, in Utah or a Compact state;

(f) parent nursing education-program shall be responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;

(g) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(h) the parent nursing education-program shall submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This

precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients in all situations. The decision to delegate must be based on careful analysis of the patient's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;
 (b) perform a nursing assessment, including an assessment of:

(i) the patient's nursing care needs including, but not limited to, the complexity and frequency of the nursing care, stability of the patient, and degree of immediate risk to the patient if the task is not carried out;

(ii) the delegatee's knowledge, skills, and abilities after training has been provided;

(iii) the nature of the task being delegated including the degree of complexity, irreversibility, predictability of outcome, and potential for harm;

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs; and

(v) the availability of adequate supervision of the delegatee.

(c) act within the area of the nurse's responsibility;

(d) act within the nurse's knowledge, skills and ability;

(e) determine whether the task can be safely performed by a delegatee or whether it requires a licensed health care provider;

(f) determine that the task being delegated is a task that a reasonable and prudent nurse would find to be within generally accepted nursing practice;

(g) determine that the task being delegated is an act consistent with the health and safety of the patient;

(h) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(i) provide instruction and direction necessary to safely perform the specific task; and

(j) provide ongoing supervision and evaluation of the delegatee who is performing the task;

(k) explain the delegation to the delegatee and that the delegated task is limited to the identified patient within the identified time frame;

(l) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; and

(m) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following

criteria as applied to each specific patient situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's condition, complexity of the task, ability of the proposed delegatee and other criteria as deemed appropriate by the nurse, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(a) A delegatee shall not further delegate to another person the tasks delegated by the delegator; and

(b) the delegated task may not be expanded by the delegatee without the express permission of the delegator.

R156-31b-701a. Delegation of Nursing Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of nursing tasks in a school setting is further defined, clarified, or established as follows:

(1) Any task being delegated by the school nurse shall be identified within a current IHP. The IHP is limited to a specific delegatee for a specific time frame.

(2) In accordance with Section 53A-11-601 and an IHP, it is appropriate for a nurse to provide training to unlicensed assistive personnel, which training includes the routine, scheduled or correction injection of insulin (via actual injection or pump) or the administration of glucagon in an emergency situation, provided that any training regarding the injection of insulin and the administration of glucagon is updated at least annually. The selection of the type of insulin and dosage levels shall not be delegated.

(3) In accordance with an IHP, and except as provided herein and in R156-31b-701, a nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to injection or administration. The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order and specified in the IHP, shall not be considered actions that require nursing assessment or judgment prior to administration and therefore, can be delegated to a delegatee.

(4) A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

(5) An IHP shall be developed for any student receiving insulin in a school. By example, but not limited to the following list, the IHP may include:

(a) carbohydrate counting;

(b) glucose testing;

(c) activation, suspension, or bolus of an insulin pump;

(d) usage of insulin pens, syringes, and an insulin pump;

(e) copy of the medical orders; and

(f) emergency protocols related to glucagon administration.

(6) Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.

(a) Dosages of insulin may be injected by the delegatee as designated in the IHP.

(b) Non-routine, correction dosages of insulin may be given by the delegatee only after:

(i) following the guidelines of the IHP; and

(ii) consulting with the delegator, parent or guardian, as designated in the IHP, and verifying and confirming the type and dosage of insulin being injected.

(c) Under Subsection (6), insulin and glucagon injections by the delegatee is limited to a specific delegatee, for a specific student and for a specific time.

(7) A student who is capable of administering his own insulin may self-administer insulin as provided in the IHP. A delegatee may verify the insulin dose of a student who self-administers insulin, if such verification is required in the IHP.

(8) When the student is not capable of self-administration, scheduled and routine correction doses of insulin may be administered, and the administration of glucagon may be performed, by a delegatee as provided in Subsection R156-31b-701a(2).

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

(3) An individual licensed as an APRN may practice within the scope of practice of a RN under the APRN license.

(4) An individual licensed in good standing in Utah as either an APRN or a CRNA and residing in this state, may practice as an RN in any Compact state.

R156-31b-703. Generally Recognized Scope of Practice of an LPN.

In accordance with Subsection 58-31b-102(15), the LPN practicing within the generally recognized LPN scope of practice practices as follows:

(1) In demonstrating professional accountability, shall:

(a) practice within the legal boundaries for practical nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(d) accept responsibility for individual nursing actions, competence, decisions and behavior in the course of practical nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a focused nursing assessment;

(b) plan for episodic nursing care;

(c) demonstrate attentiveness and provides patient surveillance and monitoring;

(d) assist in identification of patient needs;

(e) seek clarification of orders when needed;

(f) demonstrate attentiveness and provides observation for signs, symptoms and changes in patient condition;

(g) assist in the evaluation of the impact of nursing care, and contributes to the evaluation of patient care;

(h) recognize patient characteristics that may affect the patient's health status;

(i) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(j) implement appropriate aspects of patient care in a

timely manner:

(i) provide assigned and delegated aspects of patient's health care plan;

(ii) implement treatments and procedures; and

(iii) administer medications accurately;

(k) document care provided;

(l) communicate relevant and timely patient information with other health team members including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies;

(iii) significant changes in patient condition; or

(iv) patient needs;

(m) participate in nursing management:

(i) assign nursing activities to other LPNs;

(ii) delegate nursing activities for stable patients to unlicensed assistive personnel;

(iii) observe nursing measures and provide feedback to nursing manager; and

(iv) observe and communicate outcomes of delegated and assigned activities;

(n) take preventive measures to protect patient, others and self;

(o) respect patient's rights, concerns, decisions and dignity;

(p) promote a safe patient environment;

(q) maintain appropriate professional boundaries; and

(r) assume responsibility for own decisions and actions.

(3) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, contributing to the implementation of an integrated health care plan;

(b) respect patient property and the property of others; and

(c) protect confidential information unless obligated by law to disclose the information.

R156-31b-704. Generally Recognized Scope of Practice of an RN.

In accordance with Subsection 58-31b-102(16), the RN practicing within the generally recognized RN scope of practice practices as follows:

(1) In demonstrating professional accountability, shall:

(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rule;

(b) demonstrate honesty and integrity in nursing practice;

(c) base professional decisions on nursing knowledge and skills, and the needs of patients;

(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a comprehensive nursing assessment;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's condition;

(d) utilize this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's overall health care plan;

(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seek clarification of orders when needed;

(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrate attentiveness and provides patient surveillance and monitoring;

(j) identify changes in patient's health status and comprehends clinical implications of patient signs, symptoms and changes as part of expected and unexpected patient course or emergent situations;

(k) evaluate the impact of nursing care, the patient's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) document nursing care;

(m) intervene on behalf of patient when problems are identified and revises care plan as needed;

(n) recognize patient characteristics that may affect the patient's health status; and

(o) take preventive measures to protect patient, others and self.

(3) In demonstrating the responsibility to act as an advocate for patient shall:

(a) respect the patient's rights, concerns, decisions and dignity;

(b) identify patient needs;

(c) attend to patient concerns or requests;

(d) promote safe patient environment;

(e) communicate patient choices, concerns and special needs with other health team members regarding:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(f) maintain appropriate professional boundaries;

(g) maintain patient confidentiality; and

(h) assume responsibility for own decisions and actions.

(4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing, shall:

(a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) match patient needs with personnel qualifications, available resources and appropriate supervision;

(d) communicate directions and expectations for completion of the delegated activity;

(e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provide follow-up on problems and intervenes when needed;

(g) evaluate the effectiveness of the delegation or assignment;

(h) intervene when problems are identified and revises plan of care as needed;

(i) retain professional accountability for nursing care as provided;

(j) promote a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of the care environment;

(ii) identifying unsafe care situations; and

(iii) correcting problems or referring problems to appropriate management level when needed; and

(k) teach and counsel patient families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) In being a responsible member of an interdisciplinary

health care team shall:

(a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient-centered health care plan;

(b) respect patient property, and the property of others; and

(c) protect confidential information.

(6) In being the chief administrative nurse shall:

(a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role shall:

(a) teach current theory, principles of nursing practice and nursing management;

(b) provide content and clinical experiences for students consistent with statutes and rule;

(c) supervise students in the provision of nursing services; and

(d) evaluate student scholastic and clinical performance with expected program outcomes.

KEY: licensing, nurses

August 25, 2008

Notice of Continuation April 1, 2008

58-31b-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.**

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(o) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(o) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(35), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract.

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(18) and 58-55-102(29), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 55.

R156-55a-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.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor

classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18) and pursuant to Subsection 58-55-102(18)(b) is clarified as follows: the General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(28) and pursuant to Subsection 58-55-102(28) is clarified as follows: the Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a

construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(28).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of rain gutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Guniting and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants

limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile

that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of small decorative pools, tanks, and fountains. Hothouses and greenhouses, retaining walls, fences, walks, garden lighting of 50 volts or less, and sprinkler systems. Patio areas when they are an incidental part of the prime contract.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for

construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of solid wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope

of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

B200 - Modular Unit Installation Contractor

R100 - Residential and Small Commercial Contractor

R101 - Residential and Small Commercial Non Structural

Remodeling and Repair Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank

Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor
 S250 - Insulation Contractor
 S260 - General Concrete Contractor
 S270 - General Drywall and Plastering Contractor
 S280 - General Roofing Contractor
 S290 - General Masonry Contractor
 S293 - Marble, Tile and Ceramic Contractor
 S300 - General Painting Contractor
 S310 - Excavation and Grading Contractor
 S320 - Steel Erection Contractor
 S321 - Steel Reinforcing Contractor
 S330 - Landscaping Contractor
 S340 - Sheet Metal Contractor
 S350 - HVAC Contractor
 S351 - Refrigerated Air Conditioning Contractor
 S353 - Warm Air Heating Contractor
 S360 - Refrigeration Contractor
 S370 - Fire Suppression Systems Contractor
 S380 - Swimming Pool and Spa Contractor
 S390 - Sewer and Waste Water Pipeline Contractor
 S410 - Pipeline and Conduit Contractor
 S440 - Sign Installation Contractor
 S450 - Mechanical Insulation Contractor
 S490 - Wood Flooring Contractor
 S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or
 (b) given by another state if the Division has determined the examination to be substantially equivalent.

(5) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and
 (b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have

one year of experience credited towards the supervisory or managerial experience requirement.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Each qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as either a journeyman or master electrician or a residential journeyman or residential master electrician.

(2) Each qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as either a journeyman plumber or a residential journeyman plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least \$100,000 for each incident and \$300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in

accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

- (i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and
- (ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-303a. Renewal Cycle - Procedures.

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

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-501(21), each licensee shall complete a total of six hours of continuing education every two years. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Commission, in conjunction with the Division, may defer or waive the continuing education requirements of a licensee if:

(i) a serious illness or other circumstances limit the licensee's ability to complete the continuing education requirements, such as governmental, educational or ecclesiastical assignments; or

(ii) the licensee is a secondary or post secondary education construction instructor.

(e) The Division may grant a licensee an extension of time within which to comply with this rule as the Division considers appropriate.

(2) Prior Approval of Continuing Education Courses. A provider of continuing education shall submit a request to the Division for approval of the course.

(a) The provider shall not teach the course until the provider has received approval from the Division.

(b) The Commission, in concurrence with the Division Director, will determine whether the subject matter of a course is acceptable for continuing education credit.

(3) In determining whether to approve a course for core education or professional education, the Commission and the Division Director may consider whether the course meets the additional standards in this Subsection (3) as follows:

(a) Time. A continuing education course shall consist of 50 minute blocks of seminars, lectures, conferences, training sessions or distance learning modules. Each 50 minute block shall constitute one hour of continuing education.

(b) Provider. The course provider shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) any other provider providing a program related to the construction trades, if approved by the Commission with the concurrence of the Division Director.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The teaching methods shall be clearly stated and appropriate.

(f) Faculty. The faculty shall be qualified both in experience and in teaching expertise.

(g) Documentation. Certificate of completion meeting the requirements of Subsection (5) shall be provided by the provider to the attendees.

(4) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(5) Certificates of completion provided to the Division by the licensee shall include the following information:

(a) the licensee's name, license number, and date of course;

(b) the name of the course provider, course title, hours of credit and type of credit; and

(c) the signatures of the course instructor and the licensee.

(6) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due.

(7) Licensees who lecture in an accredited continuing education course shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(8) The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.

(9) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

R156-55a-304. Construction Trades Instruction Facility License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the

contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-306(2) and 58-55-102(16), the Division may consider various relevant factors in conducting an audit of the demonstration of financial responsibility including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) the applicant's or licensee's financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report of the applicant or licensee which meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) the applicant's or licensee's explanation of the reasons for any financial difficulties and how the financial difficulties were resolved; and

(e) any of the factors listed in Subsection R156-1-302 which may relate to failure to maintain financial responsibility.

(2) If the applicant or licensee has an inadequate financial history, the Division may also consider the following factors:

(a) each of the factors listed in Subsection (1) regarding the financial history of the owners of the applicant or licensee;

(b) any guaranty agreements provided for the applicant or licensee; and

(c) any history of prior entities owned or operated by the owners of the applicant or licensee which have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of

80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and
- (e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

- (a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;
- (b) current Utah licensed Journeyman or Residential Journeyman plumber license; or
- (c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:
 - (i) name of the association, school, union, or other organization who administered the exam;
 - (ii) name of the person who passed the exam;
 - (iii) name of the exam;
 - (iv) the date the exam was passed; and
 - (v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under

Title 58, Chapter 55:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$1,000.00
58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
58-55-504(2)	\$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
58-55-504(2)	\$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators; or

(2) a certification issued by the Southern California Crane and Hoisting Certification Program.

KEY: contractors, occupational licensing, licensing

June 24, 2008 58-1-106(1)(a)

Notice of Continuation November 8, 2006 58-1-202(1)(a)

58-55-101

58-55-308(1)

58-55-102(35)

58-55-501(21)

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

R156-55d-101. Title.

This rule is known as the "Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

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

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

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

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

R156-55d-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

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

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

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

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

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

(b) two fingerprint cards containing:

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

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

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

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

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

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

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

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

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-55d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

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

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

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

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

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

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

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

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

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

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

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

(2) An alarm agent upon receiving initial licensure may

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

(3) An alarm agent shall carry evidence of the NBF AA level one certification or equivalent training with him at all times.

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

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

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

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

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

KEY: licensing, alarm company, burglar alarms

October 18, 2005

58-55-101

Notice of Continuation June 28, 2005

58-1-106(1)(a)

58-1-202(1)(a)

58-55-302(3)(k)

58-55-302(3)(l)

58-55-302(4)

58-55-308

R162. Commerce, Real Estate.**R162-10. Administrative Procedures.****R162-10-1. Formal Adjudicative Proceedings.**

10.1. Any adjudicative proceeding as to the following matters shall be conducted as a formal adjudicative proceeding:

10.1.1. The revocation or suspension of any registration issued pursuant to the Time Share and Camp Resort Act, or the imposition of a fine against the registrant.

10.1.2. The revocation or suspension of any registration issued pursuant to the Utah Uniform Land Sales Practices Act, or the imposition of a fine against the registrant.

10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders.

R162-10-2. Informal Adjudicative Proceedings.

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.

10.2.3. The issuance of renewal or certification of real estate schools or instructors.

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.

10.2.5. The issuance or renewal of registration pursuant to the Land Sales Practices Act.

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation.

10.2.12. Except as provided in Section 63G-4-502, a disciplinary action commenced by the Division following investigation of a complaint.

R162-10-3. Proceedings Not Designated.

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.

R162-10-4. Hearings Required in Informal Adjudicative Proceedings.

10.4.1 A post-revocation hearing will be held if a licensee whose license has been automatically revoked pursuant to U.C.A. Section 61-2-9(1)(e)(i) files a timely request for a hearing to challenge the revocation.

10.4.2 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2-12 following investigation of a complaint by the Division.

R162-10-5. Procedures for Hearings in All Informal Adjudicative Proceedings.

10.5.1 The procedures to be followed in all informal

adjudicative proceedings shall be as set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Department of Commerce Administrative Procedures Act Rules, Utah Administrative Code Section R151-46b, and in this Section R162-10-5.

10.5.2 Assistance of Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge or any request for assistance from an Administrative Law Judge shall be in writing.

10.5.3 Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information it has already provided to that party.

10.5.4 Intervention. Intervention is prohibited.

10.5.5 Notice of hearing. Upon the scheduling of a hearing by the Division, the Division shall mail written notice of the date, time, and place scheduled for the hearing. If the respondent in a proceeding commenced by the Division is an actively licensed sales agent or associate broker, the Division shall mail a copy of the notice of hearing to the principal broker with whom the respondent is licensed.

10.5.6 Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, the Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act.

10.5.7 Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, and the witness fee and mileage to be paid to the witness.

10.5.8 Representation by counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

10.5.9 Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to the proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.

10.5.10 Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting a review. The Order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly

mailed or delivered to each of the parties.

R162-10-6. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

10.6 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2-12 following the investigation by the Division of a complaint:

10.6.1 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.

10.6.2 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2-12 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.

10.6.3 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.

10.6.3.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness the party intends to call to testify at the hearing, and a summary of the testimony expected from the witness.

10.6.3.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.

10.6.4 Pre-hearing Motions. Any pre-hearing motion permitted by Utah Administrative Code Section R151-46b, the Department of Commerce Administrative Procedures Act Rules, shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.

KEY: real estate business

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61-2-5.5

63G-4-102(5)

R162. Commerce, Real Estate.**R162-109. Administrative Proceedings.****R162-109-1. Formal Adjudicative Proceedings.**

109.1. Any proceedings conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as formal adjudicative proceedings.

R162-109-2. Informal Adjudicative Proceedings.

109.2.1 Proceedings in which the Division seeks disciplinary action pursuant to U.C.A. Section 61-2b-29 against a licensed or certified appraiser shall be conducted as informal adjudicative proceedings.

109.2.2 Proceedings on original applications for licensure or certification, or renewal applications for licensure or certification, as an appraiser, or for certification of appraisal courses, schools, or instructors, and all proceedings on applications for a temporary permit or registration as an expert witness, shall be conducted as informal adjudicative proceedings.

109.2.3 All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

109.2.4 A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Appraiser Licensing and Certification Act or these rules.

109.2.5 Application forms which shall be filled out and submitted to the Division for registration as an expert witness, licensure or certification as an appraiser, or for certification of courses, schools, or instructors, and all applications for a temporary permit shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102 et seq.

109.2.5.1 Upon receipt of an application, the Division shall:

(a) issue and mail a license, certification, temporary permit, or registration as an expert witness, which shall be deemed notification that the application is granted;

(b) notify the applicant that the application is incomplete and that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Appraiser Licensing and Certification Board for the purpose of determining the applicant's fitness for appraiser licensure or certification, or issuance to the applicant of a temporary permit; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

109.2.6. Other Requests for Agency Action

109.2.6.1 Other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date of mailing of the request for agency action;

(d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(e) a statement of the relief or action sought from the Division; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

109.2.6.2 Upon receipt of a request for agency action other than an application for registration, licensure or certification, the Division shall:

(a) notify the requestor in writing that the request is granted;

(b) notify the requestor that the request is incomplete and

that further information is needed before the Division is able to make a determination on the request;

(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or

(d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

109.2.6.3 A complaint against an appraiser or the holder of a temporary permit requesting that the Division commence an investigation or a disciplinary action is not a request for agency action.

R162-109-3. Hearings Not Required.

109.3. A hearing is not required and will not be held in the following informal adjudicative proceedings:

109.3.1 The issuance, renewal or reinstatement of an appraiser license or certification;

109.3.2 The issuance or renewal of an appraisal course, school, or instructor certification;

109.3.3 The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; or

109.3.4 The denial of renewal or reinstatement of an appraiser license or certification for failure to complete any continuing education required by Section 61-2b-40.

R162-109-4. Hearings Permitted.

109.4.1 In the following informal adjudicative proceedings, a hearing will be held only if requested in writing by a party within 20 days from the date a notice of agency action or the Division's response to a request for agency action is mailed:

109.4.1.1 The denial of an application for certification as an instructor on the grounds that his attestation to upstanding moral character is false;

109.4.1.2 The denial of an application for an initial appraiser license or certification due to insufficient education or experience, as determined by the appropriate review committee appointed by the Appraiser Licensing and Certification Board; or

109.4.1.3 The denial of an application for a temporary permit.

109.4.2 A request by a party for a hearing shall include the grounds upon which relief is requested.

109.4.3 Hearings permitted by this rule will be before the Utah Appraiser Licensing and Certification Board.

R162-109-5. Hearings Required.

109.5.1 Hearings will be held in all proceedings in which the Division seeks to deny an application for original or renewed licensure or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness.

109.5.2 Hearings will be held in all proceedings conducted subsequent to the issuance of a cease and desist order or other emergency order.

109.5.3 Hearings will be held in all proceedings in which the Division seeks disciplinary action pursuant to U.C.A. Section 61-2b-29 against a licensed or certified appraiser.

R162-109-6. Procedures for Hearings in Informal Adjudicative Proceedings.

109.6.1 The procedures to be followed in all informal adjudicative proceedings shall be as set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Department of Commerce Administrative Procedures Act Rules, Utah

Administrative Code Section R151-46b, and in this Section R162-109-6.

109.6.2 Notice of Agency Action and Petition. The Division shall commence a proceeding for disciplinary action pursuant to U.C.A. Section 61-2b-29 by the filing and service of a Notice of Agency Action and a Petition setting forth the allegations made by the Division.

109.6.3 Answer. The presiding officer may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2b-29 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days of the mailing date of the Notice of Agency Action and Petition.

109.6.4 Assistance of Administrative Law Judge. In any proceeding under this subsection, the Board may delegate the hearing to an Administrative Law Judge or may request that an Administrative Law Judge assist the Board in conducting the hearing.

109.6.5 Notice of hearing. Upon the scheduling of a hearing by the Division or upon receipt of a timely request for a hearing where hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

109.6.6 Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and to all materials and information gathered in any investigation to the extent permitted by law.

109.6.7 Intervention is prohibited.

109.6.8 Hearings shall be open to all parties, except that a hearing on an applicant's fitness for licensure or certification may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act. The parties named in the Notice of Agency Action or the Request for Agency Action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

109.6.9 Within a reasonable time after the hearing, the presiding officer shall cause to be issued and mailed to the parties a signed order in writing based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons for the decision, and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.

109.6.10 The Division may, but shall not be required to, record the hearing. If a record has been made, any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.

KEY: real estate appraisals

July 27, 2005

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61-2b-30

R162. Commerce, Real Estate.**R162-209. Administrative Proceedings.****R162-209-1. Requests for Agency Action.**

209.1.1 Any application form which is filled out and submitted to the Division for a license or renewal of a license, or for certification of a school, instructor, or course, shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102, et seq.

209.1.2 A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102, et seq.

209.1.3 Other requests for agency action shall be in writing and signed by the requestor, and shall contain the information required by the Utah Administrative Procedures Act, Section 63G-4-201.

R162-209-2. Formal Adjudicative Proceedings.

Any adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted on a formal basis.

R162-209-3. Informal Adjudicative Proceedings.

209.3.1 All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.3.2 A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.3.3 All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings.

209.3.4 All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings.

209.3.5 Except as provided in Section 63G-4-502, all proceedings for disciplinary action commenced by the Division following investigation of a complaint will be conducted as informal adjudicative proceedings.

R162-209-4. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewed license when the application has been approved by the Division;

(b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division;

(c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division;

(d) The denial of an application for original or renewed license on the ground that it is incomplete;

(e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or

(f) All proceedings on an application for an exemption from the continuing education requirement.

R162-209-5. Hearings Required in Informal Adjudicative Proceedings.

209.5.1 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2c-402.

R162-209-6. Hearings Permitted.

209.6.1 Except as provided in Subsection 209.6.2, an informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

209.6.2 Upon a finding of good cause shown for a delay in requesting a hearing, the Director may grant a post-revocation hearing to a licensee whose request for a hearing was not timely made.

R162-209-7. Procedures for Hearing in All Informal Adjudicative Proceedings.

209.7.1 The procedures to be followed in all informal adjudicative proceedings are set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, Utah Administrative Code Section R151-46b, and in these rules.

209.7.2 Except as provided in Subsection 209.8.3 of these rules, a party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.7.3 Assistance of an Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge shall be in writing.

209.7.4. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.7.5. Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information that it has already provided to that party.

209.7.6. Intervention. Intervention is prohibited.

209.7.7. Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, the Utah Administrative Procedures Act, or Title 52, Chapter 4, the Open and Public Meetings Act.

209.7.8 Representation by Counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.7.9. Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has

requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, the witness fee and mileage to be paid to the witness.

209.7.10. Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to a proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's recording of the proceedings.

209.7.11. Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting review. The order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties.

R162-209-8. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

209.8.1 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2c-402 following the investigation of a complaint by the Division:

209.8.2 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.

209.8.3 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2c-402 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.

209.8.4 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.

209.8.4.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness, and a summary of the testimony expected from the witness.

209.8.4.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.

209.8.5 Pre-hearing Motions. Any pre-hearing motion permitted by the Department of Commerce Administrative Procedures Act Rules shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.

**KEY: residential mortgage loan origination
August 29, 2006
Notice of Continuation January 30, 2006**

63G-4-202

R164. Commerce, Securities.

R164-31. Administrative Fines.

R164-31-1. Guidelines for the Assessment of Administrative Fines.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-6, 61-1-12, 61-1-14, 61-1-20 and 61-1-24.

(2) This rule identifies guidelines for the assessment of administrative fines. The guidelines should not be considered all-inclusive but rather are intended to provide factors to be considered when imposing a fine.

(B) Guidelines.

(1) For the purpose of determining the amount of an administrative fine assessed against a person under the Utah Uniform Securities Act, the Division Director shall consider the following factors:

(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(b) the harm to other persons resulting either directly or indirectly from the violation;

(c) cooperation by the person in any inquiry conducted by the Division concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation, including any restitution made to other persons injured by the acts of the person;

(d) the history of previous violations by the person;

(e) the need to deter the person or other persons from committing such violations in the future; and

(f) such other matters as justice may require.

KEY: administrative fines, securities regulation, securities August 26, 2008

61-1-6

61-1-12

61-1-14

61-1-20

61-1-24

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

As provided in Section 63M-7-506 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 63M-7-511(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 63M-7-502(9).

B. Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63M-7-502(20) and 63M-7-511(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 63M-7-524(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 63M-7-503, 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 63M-7-511 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63M-7-522, 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 63M-7-511(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 63M-7-511(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 63M-7-501, 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 63M-7-521, 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 63M-7-511(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 63M-7-519, 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 63M-7-510(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 63M-7-511(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 63M-7-502(22) and 63M-7-512(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 63M-7-506(1)(c) and 63M-7-525(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 63M-7-502(20) and 63M-7-511(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 by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. 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 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

B. Except as provided in Subsection (C), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

C. The Crime Victim Reparations Board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of domestic violence or child abuse may be awarded for actual rent expenses for up to two months, not to exceed a maximum rent award of \$1500, 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 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 63M-7-502(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 63M-7-506(1)(i), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63M-7-506(1)(i), "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

August 11, 2008

63M-7-501 et seq.

Notice of Continuation July 3, 2006

R277. Education, Administration.**R277-110. Legislative Supplemental Salary Adjustment.****R277-110-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "District or charter school" means a public school funded by the Utah State Legislature through the Minimum School Program.
- C. "Educator" means a teacher or other individual as defined by the Utah State Legislature in 53A-17a-153.
- D. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1). The adjustment amount for 2007-08 was \$2500. The adjustment amount for 2008-09 is \$1700.
- E. "USOE" means the Utah State Office of Education.
- F. "USDB" means Utah Schools for the Deaf and the Blind.

R277-110-2. 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-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.
- B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments.

R277-110-3. Procedures.

- A. Each school district, charter school and USDB shall:
 - (1) have employee evaluation procedures consistent with Title 53A, Chapter 10; schools exempt from Title 53A, Chapter 10 shall have employee evaluation procedures in place to participate in the Program and receive funds under Section 53A-17a-153.
 - (2) put the Educator Salary Adjustment appropriation into the school district's, charter school's or USDB's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;
 - (3) ensure the amount of the Educator Salary Adjustment is the same for each full-time-equivalent educator position in the school district, charter school, or the USDB;
 - (4) ensure that each person who is not a full-time educator receives a proportional salary adjustment based on the number of hours the person works in his current assignment as an educator;
 - (5) ensure that each educator who receives a salary adjustment for school year 2007-08 or 2008-09 or both has received a satisfactory or above job performance rating in his most recent evaluation concluded in the school year prior to the year for which the adjustment is made; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.
- B. Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.
- C. The educator shall be:
 - (1) a classroom teacher (2007-08 and 2008-09);
 - (2) speech pathologist (2007-08 and 2008-09);
 - (3) librarian or media specialist (2007-08 and 2008-09);
 - (4) preschool teacher (2007-08 and 2008-09);
 - (5) school building level administrator (2007-08);
 - (6) mentor teacher (2007-08 and 2008-09);
 - (7) teacher specialist (2007-08 and 2008-09);
 - (8) teacher leader (2007-08 and 2008-09);
 - (9) guidance counselor (2007-08 and 2008-09);
 - (10) audiologist (2007-08 and 2008-09);
 - (11) psychologist (2007-08 and 2008-09); or

(12) social worker as defined in 53A-17a-153 (1) (2007-08 and 2008-09).

D. The educator shall be licensed, employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

E. Each school district, charter school, and the USDB shall annually note on the appropriate salary schedule:

- (1) the amount of the Educator Salary Adjustment;
- (2) the positions qualifying for the adjustment;
- (3) that a satisfactory or better performance rating is required to receive the adjustment; and

F. For the 2008-09 school year, school districts, charter schools and the USDB shall note satisfactory performance ratings.

G. The USOE shall remit to school districts, charter schools and USDB, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

H. Adjustments to CACTUS after November 15 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

I. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. School districts, charter schools and USDB shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by November 1 on USOE-designated forms.

- (1) School districts, charter schools and USDB, shall
 - (a) Maintain the information by program and;
 - (b) Carry over any unused balances within the program for use in the following year.
- (2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).
- (3) Failure to submit the required reports on a timely basis may result in withholding of school district, charter school or USDB funds until the report is submitted in an acceptable format and is complete, or may render the school district, charter school or USDB, ineligible for participation in the Educator Salary Adjustment program the following year.
- (4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of school district, charter school or USDB funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

**KEY: educators, salary adjustments
August 7, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-153(6)**

R277. Education, Administration.**R277-116. USOE Internal Audit Procedure.****R277-116-1. Definitions.**

A. "Audit" means performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS, Comptroller General of the United States, July 2007 (GAO-07-731G) revision which is hereby incorporated by reference, and available from the USOE Internal Auditor and at the Utah Attorney General's Office.

B. "Audit Committee" means the audit committee of the Board composed of the Chairman, Vice Chairman and three Standing Committee Chairs of the Board given the responsibility to determine the relative importance of audit requests, receive reports from the internal auditor, and release audit reports to Board members and other interested parties.

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

D. "Internal Auditor" means the Board's Internal Auditor who is direct staff, has a personal and confidential relationship to the Board, and who is appointed by the Board for the purpose of conducting performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS. The Internal Auditor may conduct other auditing assignments as directed by the Board. The Internal Auditor cooperates and coordinates with the Audit Committee. The Internal Auditor's performance is evaluated by the Board or a committee of Board members.

E. "LEA" means any local education agency under the supervision of the Board including local school districts, regional service centers, area technology centers and vocational programs.

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

G. "Yellow Book Standards" means the auditing standards outlined in the GOVERNMENT AUDITING STANDARDS (complete citation above).

R277-116-2. 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, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(f) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts and by Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

R277-116-3. Audit Committee Responsibilities.

The Audit Committee shall:

A. determine the priority for audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. distribute drafts or preliminary versions of audits only to other Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee and the auditee are drafts and, as such, are not public records;

C. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

D. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board.

R277-116-4. Internal Auditor Authority and Responsibilities.

A. The Internal Auditor reports directly to and is responsible solely to the Board, in cooperation with the Audit Committee.

B. The Internal Auditor shall conduct audits as may be recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

C. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board.

D. The Internal Auditor shall notify the Audit Committee and the Board in a timely manner of any irregularity or serious deficiency discovered in the audit process.

E. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

F. The Internal Auditor shall review, upon the Board's direction, the implementation of recommendations or alternative actions taken as a result of an audit.

R277-116-5. Scope of Internal Audits.

A. An audit conducted by the Internal Auditor may include any or all of the following:

(1) an examination of any Board-supervised program or entity records or financial books to determine the accuracy and completeness of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly and professionally record the acquisition, custody, and use of public funds;

(2) an examination to determine whether program or entity administrators and staff have adhered to state law and Board rules;

(3) an examination to determine if operations of a program or entity have been accomplished lawfully and efficiently; and

(4) an examination to determine whether management control and information systems are adequate to guarantee compliance with the law and Board rules.

KEY: educational administration

August 7, 2008

Notice of Continuation September 6, 2007

**Art X Sec 3
53A-1-401(3)
53A-1-401(4)
53A-1-405
53A-1-402(1)(f)
53A-17a-147(2)**

R277. Education, Administration.**R277-419. Pupil Accounting.****R277-419-1. Definitions.**

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

F. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

G. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

H. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

I. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

J. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

K. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action or both; or

(4) other extenuating circumstances beyond the control of the student.

L. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

M. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

N. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall

count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

O. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

P. "School year" means the 12 month period from July 1 through June 30.

Q. "Self-contained" means a public school student with an IEP who receives 180 minutes or more of special education services during a typical school day.

R. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

S. "SSID" means Statewide Student Identifier.

T. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

U. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-3B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

W. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

X. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

Y. "YIC" means Youth in Custody.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of days for individual students and schools are provided for in R277-419-7.

(2) The required days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department,

that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

- (a) entry date;
- (b) exit date;
- (c) exit or high school completion status;
- (d) whether or not an absence was excused; and
- (e) disability status (resource or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

- (i) entry date;
- (ii) exit date; and
- (iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C(1) Due to school activities requiring schedule and program modification during the first days and last days of the school year, an LEA may report for the first five days, aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last three-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding three-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall

enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-4. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC service code other than RSM, ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

(3) Special education membership for YIC students shall be reported via the Data Clearinghouse.

C. Calculations

(1) If a student was enrolled for only part of the school year or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the

student's aggregate membership would be $(900/990)*180$, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular and self-contained special education membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) four periods each school day, if the student is enrolled in a YIC program with a YIC secure service code of ISI-2. State-funded YIC programs operating in facilities that provide residential care may receive funding for a maximum of 205 days, with prior USOE approval;

(4) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-5. High School Completion Status.

A. LEAs shall use the following decision rules and associated codes in the Data Clearinghouse to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) dropped out (DO), when no other status code legitimately represents the reason for departure or absence from school;

(2) died (DE);

(3) expelled (EX);

(4) graduated with a high school diploma, (G*) by satisfying one of the options specified in R277-705-4B;

(5) received a certificate of completion (CT):

(a) to qualify for a certificate, a student shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C;

(6) suspended (SU);

(7) transferred out of state (TO);

(8) transferred out of the country (TC);

(9) transferred to a private school (TP);

(10) transferred to home schooling (TH);

(11)(a) U.S. citizen who enrolled in another country as a foreign exchange student (FE);

(b) non-U.S. citizen who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206(2)(i)(B) shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(12) withdrawn (WD) due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-4(A)(1)(f)(ii);

(13) transferred to adult education (AE);

(14) transferred to higher education (HE), without first obtaining either a diploma or certificate of completion; and

(15) aged out of special education (AO).

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

R277-419-6. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-7. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1N, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

**KEY: education finance, school enrollment
August 7, 2008
Notice of Continuation October 5, 2007**

**Art X Sec 3
53A-1-401(3)
53A-1-402(1)(e)
53A-1-404(2)
53A-1-301(3)(d)
53A-3-404
53A-3-410**

R277. Education, Administration.**R277-437. Student Enrollment Options.****R277-437-1. Definitions.**

A. "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

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

C. "District of residence" means a student's school district of residence under Section 53A-2-201.

D. "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

E. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

(a) maintenance and operation;

(b) tort liability; and

(c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

F. "Safety emergency" means a situation in which:

(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or

(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.

G. "School of residence" means the school which a student would normally attend in the student's district of residence.

H. "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

I. "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

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

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53A-2-210 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53A-2-206.5 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.

B. The purpose of this rule is:

(1) to establish necessary definitions;

(2) to establish a formula for the residual per pupil

expenditure for school districts to reimburse each other for full and part-time nonresident students;

(3) to summarize school, school district, and state responsibilities under Section 53A-2-206.5; and

(4) to provide a standard statewide open enrollment form required under Section 53A-2-207(4)(b).

R277-437-3. Local School Board and District Responsibilities.

A. Prior to September 30, 2008, a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53A-2-206.5 et seq.

B. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Section 53A-2-207(4)(c).

C. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

D. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

E. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-II.

F. There shall be no presumption of eligibility for students to participate in activities governed by the Utah High School Activities Association (UHSAA) if students transfer under Section 53A-2-206.5.

R277-437-4. State Board of Education Responsibilities.

A. Capacity for special education classrooms shall:

(1) be consistent with Utah Special Education Caseload Guidelines; and

(2) depend on staffing and funding constraints of the receiving school district.

B. A standard enrollment options application form shall be available on the USOE website by May 15, 2008.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53A-2-210(3)(b)(i).

KEY: public education, enrollment options**August 7, 2008****Notice of Continuation January 5, 2004****Art X Sec 3****53A-1-401(1)(b)****53A-2-210****53A-2-206.5 et seq.**

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. "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, objectives and assessments set by the state or school district for specific courses or grade levels.

F. "Curriculum map" means a visual representation, a tool, for assisting developers to conceptualize shared visions and values which will drive the curriculum as a whole. Sometimes called a concept map, this tool clarifies a plan for knowledge construction; it shows the links and relationships between concepts.

G. "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.

H. "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.

I. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

J. "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.

K. 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.

L. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

M. "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.

N. "Primary instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

O. "Public website" means a website designated by the USOE provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment and mapping to the Core for Utah primary instructional materials.

P. "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.

Q. "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.

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

S. "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 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, by Section 53A-14-107 which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation and its placement on a public website, 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. A local board shall establish a policy for school district and school selection and purchase of instructional materials.

B. The detailed Core curriculum alignment shall be required prior to the purchase of primary instructional materials by public schools and school districts purchased after July 1, 2008.

R277-469-9. Qualifications for Core Curriculum Alignment Independent Parties.

Independent parties that may align and map primary instructional materials shall use reviewer(s)/employee(s) who meet the following minimum requirements:

(1) have a degree or an endorsement specific to the subject area of the primary instructional materials. For example, a reviewer who is aligning an American literature text shall have an English endorsement or degree; a reviewer who is mapping a calculus text shall have a mathematics endorsement or a related mathematics degree. The USOE shall make available to independent parties a list of acceptable endorsements or degrees

that shall be current and valid for appropriate review of materials; and

(2) may not be current employees of a publishing company seeking the alignment and map of primary instructional materials;

(3) shall post documentation of credentials and endorsements on a public website designated by the USOE as required under Section 53A-14-107(3)(b).

R277-469-10. Detailed Summary Requirements.

Independent parties that may align and map primary instructional materials shall provide to the publisher a detailed summary of the evaluation. The summary shall:

A. be provided on a public website required under Section 53A-14-107(3)(b) designated by the USOE;

B. submit the summary in the alignment template provided by the USOE;

C. submit the summary in a searchable, software database format designated by the USOE;

D. include detailed alignment information that includes at a minimum:

(1) the title of the material;

(2) the ISBN number;

(3) the publisher's name;

(4) the name/grade of the Core document used to align the material;

(5) the overall percentage of coverage of the Core;

(6) the overall percentage of coverage in ancillary resources of the material to the Core;

(7) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(8) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;

(9) objective and indicator in the Core with corresponding page numbers; and

E. provide the detailed alignment information listed in R277-477-469-10A(4) for the student text for all editions of the text that are used in Utah public schools;

F. provide the detailed alignment information listed in R277-464-10A(4) for a teacher edition of text, if a teacher edition is used in Utah public schools;

G. provide a map of the materials detailing when the materials should be used in a 180 day school schedule including the standard, objective and indicator of the item to be taught with corresponding page numbers; the recommended use of the material, such as to introduce a concept, to gain information about a concept, to extend understanding of a concept, to apply a concept, or to assess a concept; and hyperlinks to other materials, websites, or lesson plans that correspond to the concept.

H. designate at the conclusion of the alignment document, the reviewer's evaluation of the material's alignment to the Core curriculum on a scale of 1-10, with 10 indicating the closest alignment to the Utah Core curriculum; and

I. provide an assurance, including a personal (electronic is adequate) signature that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-11. 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 who meets the requirements in R277-469-9 to align and map the primary instructional material and related ancillary materials to the appropriate Utah Core with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment and mapping as described in R277-469-10 at no

charge; and

(b) the publisher pays the costs associated with the requirements of Section 53A-14-107.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. 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.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-11 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. 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;

(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; and

(e) a new curriculum alignment and map summary is provided.

(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.

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

R277-469-12. 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

August 7, 2008

Notice of Continuation March 3, 2008

Art X, Sec 3

53A-14-101

53A-14-107

53A-1-401(3)

R277. Education, Administration.**R277-492. Utah Science Technology and Research Initiative (USTAR) Centers Program.****R277-492-1. Definitions.**

A. "Annual report" means information and data identified under R277-492 provided by funding recipients to the USOE annually by June 30 as a requirement for continued funding of the school or school district program.

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

C. "Extended year" means either a longer contract day or a longer contract year for participating teachers.

D. "Mathematics or science teacher" means a teacher with a secondary (7-12) mathematics or science teaching assignment.

E. "School district/charter school USTAR proposal" means a written proposal, including components required by the Board, developed and submitted by a school district/charter school applying for USTAR funding.

F. "STEM" means science, technology, engineering and mathematics.

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

H. "USTAR" means Utah Science Technology and Research.

I. "USTAR Program" means student and teacher opportunities to broaden their knowledge and experiences within STEM fields.

J. "Weighted Pupil Unit (WPU)" means the basic state funding unit.

R277-492-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-159 which appropriates funding to establish extended contracts for mathematics and science teachers as part of the Utah Science Technology and Research (USTAR) Centers Initiative. The USOE shall provide statewide supervision of the program and budget and shall recommend funding for USTAR programs based on USTAR objectives, Board funding priorities and available funds.

B. This rule establishes standards and procedures to direct recipient public school districts or charter schools to develop proposals that create USTAR Centers that will enhance their ability to retain mathematics and science teachers while simultaneously offering more opportunities for students and more effectively using capital facilities.

R277-492-3. USTAR Proposal Criteria.

A. A school district/charter school shall first identify the purpose or goal(s) of its USTAR proposal.

B. Appropriate purposes may include:

- (1) improvement in student test scores;
- (2) satisfaction of specific academic goals for all students or various groups of students;
- (3) increased retention of licensed educators in specific areas;
- (4) improved school climate;
- (5) increased opportunities for students to take remedial or college preparation courses;
- (6) increased student enrollment in identified courses;
- (7) additional opportunities for students to learn about specific or general higher education or career opportunities in math or science fields; or
- (8) other purposes consistent with Section 53A-17a-159(1)(b).

C. A school district/charter school shall provide a school schedule showing how it will extend hours of the school day (Section 53A-17a-159(1)(b)(ii)) or days of the school year (Section 53A-17-a-159(1)(b)(ii)) to maximize employee and

facility resources in furtherance of the proposal's goals.

D. The USTAR proposal shall explain how employees shall be used in the extended school day or expanded school year to maximize their effectiveness with students, including how various groups of employees will participate including classified employees, licensed employees, and appropriate supervisors for all groups. Though various school employee groups may be necessary or desirable to achieve the purposes of the proposal, the proposal shall use USTAR grant funds only to pay for hours or days worked by science or mathematics teachers with valid, current Utah educator licenses.

E. The USTAR proposal shall identify the number of designated employees that will participate in the expanded year or extended day program with the understanding that USTAR grant funds may only be used for licensed mathematics and science teachers.

F. The USTAR proposal shall identify the compensation that all necessary employees shall receive, including increased insurance and benefit costs, if appropriate; compensation may be determined by groups of employees or by individual employees.

G. The USTAR proposal shall identify how licensed educators will be evaluated for the extended hours or expanded days worked.

H. The USTAR proposal shall include a budget section, including anticipated costs and narrative.

I. The USTAR proposal shall include an evaluation component that provides opportunities for student, employee and parent participation in the assessment of the proposal's effectiveness. Proposals shall provide for evaluations of program effectiveness at least annually, beginning in July, 2009.

R277-492-4. Board/USOE Responsibilities.

A. The USOE shall carry out the responsibilities of the Board consistent with the Board's review and direction.

B. The USOE shall solicit proposals from school districts/charter schools to participate in the USTAR grant program.

C. Proposals shall be due to the USOE by June 2, 2008.

(1) The USOE will work with applicants that submit proposals early to improve proposals to the extent of resources and time available.

(2) The USOE shall deliver final charter school proposals to the State Charter School Board for Review and recommendation.

D. The USOE shall receive a consolidated request from the State Charter School Board consistent with Section 53A-17a-159(4) by June 20, 2008. The State Charter Board and State Charter Board staff shall work with charter school applicants that submit proposals early to improve proposals to the extent of resources and time available.

E. The USOE shall receive all proposals from school districts, considering the consolidated request submitted by the State Charter Board as a proposal from one school district, and rank them on an objective scale or rubric prepared by the USOE.

F. The Board may appoint an expert review panel to prioritize proposals and recommend proposals for funding.

G. The expert review panel or the USOE or both shall consider the priorities of Section 53A-17a-159(5) in recommending and selecting the recipients:

(1) rural, urban, large, small, growing and declining school districts (considering the consolidated charter request as one school district) having unique circumstances;

(2) as many pilot programs shall be funded as possible; and

(3) funded proposals should address the objectives and benefits of Section 53A-17a-159(1)(b).

H. The Board shall review recommendations, make final

decisions for funding and notify applicants that receive funding no later than July 31, 2008.

I. The USOE shall provide funds to school districts/charter schools (or the consolidated charter recipient) consistent with USOE distribution practices for grants.

R277-492-5. School District/Charter School Consolidated Proposal Responsibilities.

A. School districts shall submit proposals that meet the standards of R277-717-3 and Section 53A-17a-159 no later than June 2, 2008.

B. The State Charter Board shall complete its work under Section 53A-17a-159(4) and submit its consolidated request to the USOE no later than June 20, 2008.

C. School district and charter school proposals shall clearly demonstrate that all participants necessary for the success of a proposal are voluntary participants and understand the requirements of their participation.

D. School district and charter school participants shall demonstrate parent and community notification and support of the school district/charter school proposals.

E. Proposals shall clearly demonstrate that at least 95 percent of allocated funds shall be used for extended licensed mathematics and science teacher contracts.

F. Proposals shall clearly demonstrate that the remaining five percent of allocated funds is used only for purposes identified under Section 53A-17a-159(6)(b).

G. Funded school districts and charter schools shall provide all required evaluations to the USOE as identified by their proposals consistent with USOE timelines.

H. Funded school districts and charter schools shall provide information as requested by the USOE during the time periods identified in the proposals, including allowing for visits of USOE staff and review of student work or assessments.

R277-492-6. Final Decision-making and Reporting Requirements.

A. The Board's decisions for funding are final.

B. The USOE may request additional information, data or budget information if annual reports or student assessments indicate that USTAR funding is being used ineffectively, for ineligible employees or inconsistently with the school district/charter school proposal or the intent of the law or this rule.

C. The USOE may interrupt USTAR funding to school districts/charter schools that do not meet timelines required by this rule or that do not provide complete information or evaluations required under this rule.

D. The Board shall provide annual reports to Legislative committees as required by Section 53A-17a-159(8)

**KEY: science, technology, research, USTAR
August 7, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-159**

R277. Education, Administration.**R277-502. Educator Licensing and Data Retention.****R277-502-1. Definitions.**

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Accredited school" for purposes of this rule, means public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

F. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

J. "License areas of concentration" means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative, Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

K. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

L. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

M. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

N. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process of criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(1) LEAs and educator preparation institutions shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(2) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(3) The Level 1 license is issued for three years.

(4) An educator shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

(6) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal

after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be 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.

(1) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

- (1) Early Childhood (K-3);
- (2) Elementary (1-8);
- (3) Elementary (K-6);
- (4) Middle (still valid, but not issued after 1988, 5-9);
- (5) Secondary (6-12);
- (6) Administrative;
- (7) Career and Technical Education;
- (8) School Counselor;
- (9) School Psychologist;
- (10) School Social Worker;
- (11) Special Education (K-12);
- (12) Preschool Special Education (Birth-Age 5);
- (13) Communication Disorders;
- (14) Speech-Language Pathologist;
- (15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Letters of Authorization

(a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for areas of concentration or endorsements.

(b) An approved Letter of Authorization is valid for one year and may be renewed for a total of three years.

(c) Educators working under letters of authorization shall not be considered highly qualified.

(d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing shall be considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school district and educator.

(4) The plan filed with the USOE;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district with a trained mentor; and

(7) Work with a trained mentor.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory school district evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3. This license shall be valid for five years.

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Computer-Aided Credentials of Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data.

An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual may contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his personal file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing

August 1, 2008

Notice of Continuation September 6, 2007

Art X Sec 3

53A-6-104

53A-1-401(3)

R277. Education, Administration.**R277-515. Utah Educator Standards.****R277-515-1. Definitions.**

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

B. "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

C. "Educator or professional educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license. The "professional" denotes that the individual holds or is seeking a Utah educator license as opposed to a paraprofessional or a volunteer or unlicensed teacher in a classroom.

D. "Felony offense" means any offense for which an individual is charged with a first, second or third degree felony under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63 Chapter 56, or any other statute in the Utah Code establishing a felony.

E. "Illegal drug(s)" means a substance included in Schedules I, II, III, IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substance analog.

F. "Illegal sexual conduct" means any conduct proscribed under the Utah Criminal Code, Sections 76-5-401 through 406, Section 76-5a-1-4, and Section 76-9-704 through 704.

G. "Licensing discipline" means sanctions ranging from an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measures, for violation of professional educator standards.

H. "Misdemeanor offense" means any offense for which an individual is charged with a Class A, B, or C misdemeanor under the Utah Criminal Code, Title 76, the Public Employees Ethics Act, Title 67, Chapter 16, the Clandestine Drug Lab Act, Title 58 Chapter 37d, the Procurement Code, Title 63 Chapter 56, or any other statute in the Utah Code establishing a misdemeanor.

I. "Plea in abeyance" means a plea of guilty or no contest which is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

J. "School-related activity" means any event, activity or program occurring at the school before, during or after school hours or which students attend at a remote location as representatives of the school or with the school's authorization, or both.

K. "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

L. "Utah Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.

M. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

N. "Utah Professional Practices Advisory Commission (Commission)" means a commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

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

P. "Weapon(s)" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, by Section 53A-6 which provides all laws related to educator licensing and professional practices, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents. The rule also recognizes that licensed public school educators are professionals and, as such, should share common professional standards, expectations and role model responsibilities. The rule distinguishes behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

A. The professional educator is responsible for compliance with federal, state, and local laws.

B. The professional educator shall familiarize himself with professional ethics and is responsible for compliance with applicable professional standards.

C. Failing to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall not be convicted of any felony or misdemeanor offense which adversely affects the individual's ability to perform assigned duties and carry out the responsibilities of the profession, including role model responsibilities.

(2) shall not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(3) shall not commit any act of cruelty to children or any criminal offense involving children;

(4) shall not be convicted of a stalking crime;

(5) shall not possess or distribute illegal drugs, or be convicted of any crime related to illegal drugs, including prescription drugs not specifically prescribed for the individual;

(6) shall not be convicted of any illegal sexual conduct, including offenses that are plea bargained to lesser offenses from an initial sexual offense;

(7) shall not be subject to a diversion agreement specific to sex-related or drug-related offenses, plea in abeyance, court-imposed probation or court supervision related to criminal charges which could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(8) shall not provide to students or allow students, under the educator's supervision or control to consume alcoholic beverages or unauthorized drugs;

(9) shall not attend school or a school-related activity in an assigned supervisory capacity, while possessing, using, or under the influence of alcohol or illegal drugs;

(10) shall not intentionally exceed the prescribed dosages of prescription medications while at school or a school-related activity;

(11) shall cooperate in providing all relevant information and evidence to the proper authorities in the course of an investigation by a law enforcement agency or by Child Protective Services regarding potential criminal activity. However, an educator shall be entitled to decline to give evidence against himself in any such investigation if the same may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(12) shall report suspected child abuse or neglect to law

enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with Board rules and school district policies regarding the reporting of suspected child abuse;

(13) shall strictly adhere to state laws regarding the possession of firearms, while on school property or at school-sponsored activities, and enforce district policies related to student access to or possession of weapons;

(14) shall not solicit, encourage or consummate an inappropriate relationship, written, verbal, or physical, with a student or minor;

(15) shall not participate in sexual, physical, or emotional harassment or any combination toward any public school-age student or colleague, nor knowingly allow harassment toward students or colleagues;

(16) shall not make inappropriate contact in any communication-written, verbal, or electronic-with minor, student, or colleague, regardless of age or location;

(17) shall not interfere or discourage students' or colleagues' legitimate exercise of political and civil rights, acting consistent with law and school district/school policies;

(18) shall provide accurate and complete information in required evaluations of himself, other educators, or students, as directed, consistent with the law;

(19) shall be forthcoming with accurate and complete information to appropriate authorities regarding known educator misconduct which could adversely impact performance of professional responsibilities, including role model responsibilities, by himself or others;

(20) shall provide accurate and complete information required for licensure, transfer, or employment purposes; and

(21) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure.

(22) shall notify the USOE at the time of application for licensure of past license disciplinary action or license discipline from other jurisdictions;

(23) shall notify the USOE honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(24) shall provide complete and accurate information during an official inquiry or investigation by school district, state, or law enforcement personnel.

D. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer.

(1) An educator shall not exclude a student from participating in any program, or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and shall not engage in conduct that would encourage a student(s) to develop a prejudice on these grounds or any other, consistent with the law.

(2) An educator shall maintain confidentiality concerning a student unless revealing confidential information to authorized persons serves the best interest of the student and serves a lawful purpose, consistent with federal and state Family Educational Rights and Privacy Acts (FERPA).

(3) Consistent with the Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and Board rules, a professional educator:

(a) shall not accept bonuses or incentives from vendors, potential vendors, or gifts from parents of students, or students where there may be the appearance of a conflict of interest or impropriety;

(b) shall not accept or give gifts to students that would

suggest or further an inappropriate relationship;

(c) shall not accept or give gifts to colleagues that are inappropriate or further the appearance of impropriety;

(d) may accept donations from students, parents, and businesses donating specifically and strictly to benefit students;

(e) may accept, but not solicit, nominal appropriate personal gifts for birthdays, holidays and teacher appreciation occasions, consistent with school or school district policies and the Utah Public Officers' and Employees' Ethics Act;

(f) shall not use his position or influence to:

(i) solicit colleagues, students or parents or students to purchase equipment, supplies, or services from the educator or participate in activities that financially benefit the educator or approved in writing by the local school board or governing board;

(ii) promote athletic camps, summer leagues, travel opportunities, or other outside instructional opportunities from which the educator receives personal remuneration, and that involve students in the educator's school system, unless approved in writing consistent with local school board or governing board policy and Board rule; and

(g) shall not use school property, facilities, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

A. A professional educator maintains a positive and safe learning environment for students, and works toward meeting educational standards required by law.

B. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator, upon receiving a Utah educator license:

(1) shall take prompt and appropriate action to prevent harassment or discriminatory conduct towards students or school employees that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(2) shall resolve disciplinary problems according to law, school board policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(3) shall supervise students appropriately at school and school-related activities, home or away, consistent with district policy and building procedures and the age of the students;

(4) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety or learning;

(5) shall demonstrate honesty and integrity by strictly adhering to all state and district instructions and protocols in managing and administering standardized tests to students consistent with Section 53A-1-608 and R277-473;

(a) shall cooperate in good faith with required student assessments;

(b) shall encourage students' best efforts in all assessments;

(c) shall submit and include all required student information and assessments, as required by state law and State Board of Education rules; and

(d) shall attend training and cooperate with assessment training and assessment directives at all levels.

(6) shall not use or attempt to use school district or school computers or information systems in violation of the school district's acceptable use policy for employees or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(7) shall not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

C. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall

be imposed, most readily, if educators have received previous documented warning(s) from the educator's employer: A professional educator:

- (1) shall demonstrate respect for diverse perspectives, ideas, and opinions and encourage contributions from a broad spectrum of school and community sources, including communities whose heritage language is not English;
- (2) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;
- (3) shall maintain a positive and safe learning environment for students;
- (4) shall work toward meeting educational standards required by law;
- (5) shall teach the objectives contained in the Utah Core Curriculum;
- (6) shall not distort or alter subject matter from the Core in a manner inconsistent with the law and shall use instructional time effectively; and
- (7) shall use instructional time effectively consistent with school and school district policies.

R277-515-5. Professional Educator Responsibility for Compliance with School District Policies.

A. Failure to strictly adhere to the following shall result in licensing discipline as defined in R277-515-1G. The professional educator:

- (1) understands and follows Board rules and local board policies
- (2) understands and follows school and administrative policies and procedures;
- (3) understands and respects appropriate boundaries, established by ethical rules and school policies and directives, in teaching, supervising and interacting with students and colleagues; and
- (4) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with school and school district policy.

B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:

- (1) shall resolve grievances with students, colleagues, school community members, and parents professionally, with civility, and in accordance with school district/charter school policies; and
- (2) shall follow school district/charter school policies for collecting money from students, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

A. A professional educator exhibits integrity and honesty in relationships with school and district administrators and personnel.

B. Failure to adhere to the following may result in licensing discipline as defined in R277-515-1G. Penalties shall be imposed most readily, if educators have received previous documented warning(s) from the educator's employer. The professional educator:

- (1) shall communicate professionally and with civility with colleagues, school and community specialists, administrators and other personnel;
- (2) maintains a professional and appropriate relationship and demeanor with students, colleagues and school community members and parents;
- (3) shall not promote personal opinions, personal issues, or political positions as part of the instructional process in a

manner inconsistent with law; expresses personal opinions professionally and responsibly in the community served by the school;

- (4) shall comply with school and district policies, supervisory directives, and generally-accepted professional standards regarding appropriate dress and grooming at school and school-related events;
- (5) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;
- (6) shall honor all contracts for professional services;
- (7) shall perform all services required or directed by the educator's contract with the school district, school, or charter school with professionalism consistent with local policies and Board rules; and
- (8) shall recruit other educators for employment in another position only within district timelines and guidelines.

R277-515-7. Violations of Professional Ethics.

A. This rule establishes standards of ethical decorum and behavior for licensed educators in Utah.

B. Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against professional educators.

C. The Board and USOE shall adhere to the provisions of this rule in licensing and disciplining licensed Utah educators.

D. Reporting and employment provisions related to professional ethics are provided in:

- (1) Section 53A-3-410;
- (2) Section 53A-6-501;
- (3) Section 53A-11-403; and
- (4) R277-514-5.

**KEY: educator, professional, standards
August 7, 2008**

**Art X Sec 3
53A-1-402(1)(a)
53A-6
53A-1-401(3)**

R277. Education, Administration.**R277-526. Paraeducator to Teacher Scholarship Program.****R277-526-1. Definitions.**

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

B. "Paraeducator" for purposes of this rule means a school employee who:

(1) delivers instruction under the direct supervision of a teacher; and

(2) works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.

C. "Paraeducator Scholarship Selection Committee (Committee)" means the committee established by the Board to select scholarship recipients.

D. "Scholarship" for purposes of this rule means funds provided by the Board directly to a paraeducator to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree.

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

R277-526-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-6-802(8) which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

B. The purpose of this rule is to distribute funds to paraeducators seeking to become licensed educators and to establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-3. Scholarship Amounts and Requirements.

A. A paraeducator stipend awarded under this rule shall be used solely and completely for expenses approved by Section 53A-6-802 and this rule between July 1, 2008 and June 30, 2009.

B. A scholarship recipient shall remain continuously employed, consistent with the employment agreement and Section 53A-6-802(7).

C. A scholarship recipient shall provide documentation of progress toward graduation, as requested by the employer or the Board.

D. A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses may be responsible to reimburse the Board for the amount of scholarship funding.

E. The Committee shall determine funding for applicants from applications received from school districts and charter schools after considering the number of applications received and the amount of funding available.

F. The Committee may develop and consider selection criteria including:

(1) support from the recommending school districts/charter schools; and

(2) geographical distribution of recipients.

R277-526-4. Applicant Scholarships Recipient and School District/Charter School Responsibilities.

A. Scholarship recipients shall be employed for a minimum of 10 hours per week by a public school district or charter school at the time of application for the Paraeducator Scholarship or during the 2008-09 school year.

B. Scholarship applicants shall submit completed applications found on the USOE website or available from the USOE in person or by mail to their employers no later than June 15, 2008.

C. Applicants shall provide information about tuition expenses only on the completed application based on the most

recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

D. School districts and charter schools shall rank completed applications of qualified paraeducators within the school district or charter school in priority order and submit all applications to the USOE on or before July 1, 2008.

E. Scholarship recipients and school districts/charter schools whose employees receive funding shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

A. The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A-6-802(4) by May 15, 2008.

B. The Committee shall consist of:

(1) one Board member designated by the Board;

(2) one representative of the Board of Regents designated by the Board of Regents;

(3) one representative of the largest parent/teacher association in the state;

(4) no more than two additional representatives designated by the Board consistent with Section 53A-6-802(4).

C. The Committee shall receive completed and ranked applications from school districts and charter schools consistent with R277-526-4.

D. The Committee shall identify recipients for funding based on criteria of Section 53A-6-802 (4)(d).

E. The Committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

F. The Committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients, school districts, and charter schools.

**KEY: paraeducators, scholarships
August 7, 2008**

**Art X Sec 3
53A-1-401(3)
53A-6-802(8)**

R277. Education, Administration.**R277-606. Grants to Purchase or Retrofit Clean School Buses.****R277-606-1. Definitions.**

A. "Appropriation" for purposes of this rule means one-time funding provided by the 2008 Utah Legislature for the purpose of encouraging school districts to purchase or retrofit their school buses to meet federal standards as defined in 42 U.S.C. Sec. 16091 which are hereby incorporated by reference.

B. "Board" means "the State Board of Education.

C. "Matching funds" from school districts means monies provided by school district applicants in a fifty/fifty match for funding provided under Section 41-6a-1308 and this rule.

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

R277-606-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and by Section 41-6a-1308 which directs the Board to use the appropriation in this section to provide matching grants to school districts that agree to purchase or retrofit school buses to meet the federal standards.

B. The purpose of the rule is to distribute \$100,000 appropriated by the Legislature to school districts that agree to provide matching funds to purchase new school buses or retrofit existing school buses to meet designated federal clean air standards.

R277-606-3. State Board of Education Grants and Timelines.

A. The USOE acting on behalf of the Board shall provide an electronic application for grants under Section 41-6a-1308 and R277-606 directed to school districts.

B. The USOE shall work closely with the Utah Division of Environmental Quality (DEQ) in developing the application.

C. The USOE shall make applications available by June 1, 2008.

D. The USOE in consultation with the DEQ shall select grant applicants based on:

- (1) availability and stability of matching funds;
- (2) district support for improving school buses and maintaining and servicing the improvements;
- (3) geographic and district-size diversity of applicants; and
- (4) other criteria, as determined mutually by the USOE and the DEQ.

E. The USOE shall notify successful grant recipients no later than July 15, 2008.

F. If there are insufficient grant applications that meet all requirements of Section 41-6a-1308 and R277-606, the Board may retain the funding and seek grant applicants throughout the 2008-09 school year and beyond, if necessary.

R277-606-4. School District Responsibilities.

A. School district applicants shall identify matching funds from appropriate sources, as required under Section 41-6a-1308(3).

B. School district applicants shall submit grant applications no later than June 30, 2008.

C. School district applicants shall agree to participate in all evaluation and reporting requirements established by the USOE and the DEQ consistent with the purposes of Section 41-6a-1308.

**KEY: school buses, retrofit, purchase, grants
August 7, 2008**

**Art X Sec 3
53A-1-401(3)
41-6a-1308**

R277. Education, Administration.**R277-710. International Baccalaureate Programs.****R277-710-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate IB school" means the initial period between a school's application as an approved IB school (at various levels) and final approval by the International Baccalaureate Organization.
- C. "DP" means Diploma Program.
- D. "IB" means International Baccalaureate.
- E. "International Baccalaureate Organization" means the nonprofit educational foundation located in four regions: North America and the Caribbean; Africa/Europe/Middle East; Latin America; Asia/Pacific.
- F. "International Baccalaureate (IB) Program" means the International Baccalaureate Program established by the International Baccalaureate Organization.
- G. "MYP" means Middle Years Program.
- H. "PYP" means Primary Years Program.
- I. "USOE" means the Utah State Office of Education.
- J. "Weight Pupil Unit (WPU)" means the basic state funding unit.

R277-710-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the Board to have general supervision and control over public schools and by Section 53A-17a-120 which directs the Board to adopt rules for the expenditure of funds appropriated for accelerated learning programs, Section 53A-1-402(1) which allows the Board to adopt minimum standards for access to programs, SB 2, Section 31, Intent Language which directs \$100,000 of the 2008-09 appropriation for accelerated learning programs to International Baccalaureate programs, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedures and standards schools/school districts shall follow to qualify for state funds for the IB Program.

R277-710-3. Eligibility.

A. All school districts are eligible to apply to the International Baccalaureate Organization to participate in the IB Program which may include the Diploma Program, the Middle Years Program and the Primary Years Program.

B. School districts who participate in IB Programs have primary responsibility for identifying students who are eligible to participate in IB classes.

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

R277-710-4. Student Tuition, Fees and Credit for IB Programs.

A. Tuition may not be charged to high school students for participation in the IB Program, consistent with Section 53A-15-101(6)(b)(iii).

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

C. The school district/school shall be responsible for these waivers.

D. A student shall receive high school credit for IB classes that are consistent with the school district policies, and R277-705, Secondary School Completion and Diplomas, for awarding credit.

R277-710-5. Use of and Distribution of IB Funds.

A. School district use of state funds for the IB Program shall be limited to the following:

- (1) to offset the costs of funding smaller IB classes;
- (2) to fund workshops or training within or outside the school district to begin implementing, or coordinating an IB Program;
- (3) to purchase any of the following for library, laboratory, or direct classroom use:
 - (a) needed supplemental texts;
 - (b) student curriculum guides;
 - (c) materials; and
 - (d) equipment;
- (4) to pay an IB teacher providing direct student IB instruction;
- (5) to aid in staff development which may include:
 - (a) teacher stipends for tuition and lodging expenses connected with the pursuit of additional training on specified IB curriculum taught by the teacher
 - (b) to pay the costs for student exams; and
 - (c) to assist with costs of distance learning programs, equipment or instructors which increase the IB options in a school.
- (6) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

B. Funds allocated to school districts for IB Programs or credit shall not be used for any other program.

C. Funds shall be distributed on the basis of the following:

- (1) 50 percent of the total funds designated for the IB shall be distributed according to the number of IB semester hours successfully completed by students registered through the school district in the prior year compared to the state total of completed IB credits.
- (2) The remaining 50 percent allocation shall be distributed equally to schools where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed.

D. All candidate IB and approved IB schools shall be equally eligible for funding.

R277-710-6. Annual Reporting and Other Student Instruction Issues.

A. The Board shall develop uniform deadlines, forms, and fiscal and pupil accounting procedures for the IB Program.

B. School districts/charter schools participating in the IB Program shall provide the USOE with end-of-year expenditure reports itemized by the categories requested by the USOE.

C. School districts/charter schools participating in the IB Program shall provide for parental permission for students to participate in IB classes.

D. This rule shall apply to IB programs operating and approved as of the 2008-09 school year, and continue thereafter.

**KEY: international baccalaureate
August 7, 2008**

**Art X Sec 3
53A-17a-120
53A-1-402(1)(c)
53A-1-401(3)**

R307. Environmental Quality, Air Quality.**R307-121. General Requirements: Clean Fuel Vehicle Tax Credits.****R307-121-1. Authorization and Purpose.**

This rule is authorized by Sections 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 OEM vehicle or the conversion of a vehicle for which an income tax credit is allowed under Sections 59-7-605 and 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"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.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" is defined in Subsection 19-1-402(8).

R307-121-3. Demonstration of Eligibility 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 (VIN) 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 VIN; and
- (3) a copy of the current Utah vehicle registration.

R307-121-4. Demonstration of Eligibility 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) the VIN;
- (2) the fuel type before conversion;
- (3) the fuel type after conversion;
- (4)(a) if the vehicle is registered within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved station showing that the converted clean fuel vehicle meets all county emissions requirements for all installed fuel systems, or
- (b) in all other areas of the State 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) the conversion equipment manufacturer,
 - (b) the conversion equipment model number,
 - (c) the date of the conversion, and
 - (d) the 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);

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-121-5. Demonstration of Eligibility 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) a description, including serial number, of the special mobile equipment for which credit is to be claimed;
- (2) the fuel type before conversion;
- (3) the fuel type after conversion;
- (4) the conversion equipment 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) an original or copy of the purchase order, customer invoice, or receipt; and
- (8) 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

August 7, 2008

Notice of Continuation July 13, 2007

19-2-104

19-1-402

59-7-605

59-10-1009

R307. Environmental Quality, Air Quality.**R307-302. Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves.****R307-302-1. Definitions.**

The following additional definition applies to R307-302:

"Sole Source of Heat" means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

R307-302-2. Applicability.

(1) R307-302-3 shall apply in all regions of Utah County north of the southernmost border of Payson City and east of State Route 68, all of Salt Lake County, all of Davis County, and in all regions of Weber County west of the Wasatch Mountain Range.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in both areas.

R307-302-3. No-Burn Periods for Fine Particulate.

(1) Sole source of residential heating.

(a) Previously registered sole source residential solid fuel burning devices in areas described in (i),(ii),and(iii) below must continue to be registered with the executive secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below. No new registrations will be accepted in these areas.

(i) Areas of Utah County north of the southernmost border of Payson City and east of State Route 68,

(ii) all of Salt Lake County, and

(iii) areas in Davis County that are south of the southernmost border of Kaysville.

(b) By November 1, 2006, all sole source residential solid fuels burning devices in Weber County west of the Wasatch Mountain Range and areas north of the southernmost border of Kaysville must be registered with the executive secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah Counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the executive secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents of the affected areas shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the executive secretary or the local health district office, or those having no visible emissions.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the state implementation plan has been implemented, the following actions will be implemented immediately:

(a) The trigger level for no-burn periods as specified in (2) above will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented; and

(b) In the regions of Utah County north of the southernmost border of Payson City and east of State Route 68, Salt Lake County, Davis County, and all regions of Weber County west of the Wasatch Mountain Range, it shall be unlawful to sell or install for use as a solid fuel burning device any used solid fuel burning device that is not approved by the Environmental Protection Agency.

(4) When the ambient concentration of PM2.5 measured by monitors in Salt Lake, Davis, Weber, or Utah Counties are forecasted to reach or exceed the PM2.5 NAAQS, the executive secretary will issue a public announcement to provide broad notification that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those counties identified by the executive secretary. Residents of Salt Lake County, Davis County, or the affected areas of Utah and Weber Counties shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the executive secretary or the local health district office, or those having no visible emissions.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the executive secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in (1) above, the executive secretary may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) a national weather service forecasted clearing index value of 250 or less;

(b) forecasted wind speeds of three miles per hour or less;

(c) passage of a vigorous cold front through the Wasatch Front; or

(d) arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in (1) and (2) above, residents of Provo City shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and are registered with the executive secretary or the local health district office, or those having no visible emissions.

R307-302-5. Opacity for Residential Heating.

Except during no-burn periods as required by R307-302-3 and 4, visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) An initial fifteen minute start-up period, and

(2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

KEY: air pollution, woodburning, fireplaces, stoves

August 7, 2008

19-2-101

Notice of Continuation September 7, 2005

19-2-104

R311. Environmental Quality, Environmental Response and Remediation.**R311-200. Underground Storage Tanks: Definitions.****R311-200-1. Definitions.**

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "Alternative Fuel" means a petroleum-based fuel containing:

(A) more than ten percent ethanol, or

(B) more than twenty percent biodiesel.

(3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.

(5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

(6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

(8) "Certificate" means a document that evidences certification.

(9) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.

(10) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(11) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(12) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(13) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(14) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.

(15) "Department" means the Utah Department of Environmental Quality.

(16) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(17) "Environmental Consultant" or "Consultant" is an individual who provides or contracts to provide information, an opinion, or advice for a fee, or in conjunction with services for which a fee is charged, relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation.

(18) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(19) "EPA" means the United States Environmental Protection Agency.

(20) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.

(21) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(22) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(23) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(24) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(25) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.

(26) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(27) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(28) "No Further Action determination" means that the Executive Secretary has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(29) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(30) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(31) "Owners and operators" means either an owner or operator, or both owner and operator.

(32) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(33) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(34) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(35) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(36) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(37) "Potable Drinking Water Well" means any hole (dug,

driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(38) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(39) "Registration fee" means underground storage tank registration fee.

(40) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(41) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(42) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(43) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(44) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(45) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(46) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

(47) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(48) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(49) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(50) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(51) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(52) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(53) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(54) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(55) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations.

(56) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(57) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(58) "UST installer" means an individual who engages in underground storage tank installation.

(59) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(60) "UST remover" means an individual who engages in underground storage tank removal.

(61) "UST tester" means an individual who engages in UST testing.

(62) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

KEY: petroleum, underground storage tanks

August 18, 2008

19-6-105

Notice of Continuation April 18, 2007

19-6-403

R311. Environmental Quality, Environmental Response and Remediation.**R311-203. Underground Storage Tanks: Technical Standards.****R311-203-1. Definitions.**

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(a) The owner or operator of an underground storage tank shall notify the Executive Secretary whenever:

- (1) new USTs are brought into use;
- (2) the owner or operator changes;
- (3) changes are made to the tank or piping system;
- (4) release detection, corrosion protection, or spill or overflow prevention systems are installed, changed or upgraded, and

(5) whenever an alternative fuel is stored in the tank.

(b) All notifications shall be submitted on the current approved notification form.

(1) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.

(2) Notifications submitted to meet the requirement of R311-203-2(a)(5) shall be submitted at least 10 days, or another time period approved by the Executive Secretary, prior to storing an alternative fuel in the tank.

(c) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Executive Secretary within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers shall notify the Executive Secretary at least 10 days, or another time period approved by the Executive Secretary, before commencing any of the following activities:

- (1) the installation of a full UST system or tank only;
- (2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (3) the internal lining of a previously-existing tank;
- (4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility where the structural integrity of the UST was required to be assessed, or where there is no documentation of a properly-working cathodic protection system on the UST within 10 years of the proposed upgrade;

(5) the installation of a bladder in a tank;

(6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;

(7) the installation of a spill prevention or overflow prevention device;

(8) the installation of a leak detection monitoring system; and

(9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Executive Secretary an UST installation permit fee of \$200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee

assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(c), an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Executive Secretary of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Executive Secretary an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(3).

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Executive Secretary may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(d) The Executive Secretary shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

(1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,

(2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Executive Secretary may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Executive Secretary may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could

contain regulated substances. Tanks with overflow prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overflow device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Executive Secretary. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Executive Secretary.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Executive Secretary. The tester who performs the test shall provide the following information: location of at least three test points per tank, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

(A) at the submersible pump or other location where the piping connects to the tank;

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the

requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

(B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Executive Secretary documentation to show that the requirements of Subsections (a) and (b) to not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility; and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

(A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(B) water lines, processing tanks, and water storage tanks; and

(C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

KEY: fees, hazardous substances, petroleum, underground storage tanks

August 18, 2008

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19-6-408

R311. Environmental Quality, Environmental Response and Remediation.**R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.****R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

(1) meet all requirements for participation in the Environmental Assurance Program, or

(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Executive Secretary determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Executive Secretary shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(1) the owner or operator has a certificate of registration;

(2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(4) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank;

(5) the owner or operator has submitted a completed application according to a form provided and approved by the Executive Secretary, and has declared the financial assurance mechanism that will be used;

(6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; and

(7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3).

R311-206-4. Requirements for Environmental Assurance Program participants.

(a) To meet the requirements of Subsections 19-6-411(1)(a)(ii) and 19-6-411(1)(b)(ii) the owner or operator shall submit:

(1) A letter to the Executive Secretary stating that the facility is not engaged in petroleum production, refining, or marketing, and

(2) Evidence, each fiscal year, of average annual throughput less than 10,000 gallons per month based on current inventory records.

(b) In accordance with Subsection 19-6-411(1)(c), the annual facility throughput rate, if reported, shall be reported to the Executive Secretary as a specific number of gallons, based on the throughput for the previous calendar year.

(c) In accordance with Subsection 19-6-411(1)(d), when a petroleum storage tank is initially registered with the

Executive Secretary, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(d) In accordance with Subsection 19-6-411(6), the Executive Secretary may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(e) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(f) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The executive secretary may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Executive Secretary.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Executive Secretary.

(D) All costs of an independent audit shall be paid by the owner or operator.

(g) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Executive Secretary. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Executive Secretary may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(f)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Executive Secretary the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Executive Secretary is not in accordance with 40 CFR 280

subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Executive Secretary, and an additional processing fee shall be paid in circumstances as determined by the Executive Secretary.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Executive Secretary as follows:

(1) For State fiscal year 1998 evidence of financial assurance for all mechanisms shall be due to the Executive Secretary by June 15, 1997.

(2) Thereafter, proof of financial assurance shall be reported to the Executive Secretary and shall include:

(A) Owners and operators using the financial test of self insurance shall submit the "Letter from Chief Financial Officer" to the Executive Secretary within the maximum 120 day period specified in 40 CFR 280.95.

(B) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Executive Secretary within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Executive Secretary as well as the insured.

(ii) The insurer shall have a rating of A- or greater by A.M. Best Co.

(C) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Executive Secretary within 30 days of issuance from the issuing institution.

(D) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Executive Secretary within 30 days after implementation of the trust fund.

(E) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(F) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Executive

Secretary within 30 days of issuance.

(G) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(H) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Executive Secretary within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Executive Secretary may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Executive Secretary within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Executive Secretary may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Executive Secretary.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Executive Secretary shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Executive Secretary.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the 2000 International Fire Code, Chapters 22 and 34, published by the International Code Council, Inc.;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Executive Secretary shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Executive Secretary may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Proof of Certification.

(a) In accordance with Subsection 19-6-411(7), a tag or other means of identification shall be issued to each petroleum storage tank or underground storage tank which has demonstrated current compliance with Section 19-6-412 and Section R311-206-3 or Section R311-206-6. The tag or other means of identification shall be displayed for view of the person delivering or placing petroleum product into an underground storage tank for which the tag was issued.

(b) A tank shall not be issued a tag or other means of identification if the owner or operator has not satisfied the requirements of Section 19-6-412. An owner or operator shall not allow a tag to be displayed on a tank for which the Certificate of Compliance has been revoked or has lapsed, or on a tank for which the eligibility to receive payment for claims against the fund has lapsed unless the owner or operator has demonstrated compliance with financial assurance requirements.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) At any time after May 1, 1997, owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or

(2) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5, and

(ii) notifying the Executive Secretary at least 60 days before the date of cessation in the program, and specifying the date of cessation.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation in the program shall be the date on which coverage under the program ends. Subsequent claims for

payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Executive Secretary of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

(3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) Effective January 1, 2007, and until December 31, 2007, the Executive Secretary may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated September 30, 2003 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

(c) Effective January 1, 2008, the Executive Secretary may determine that reasonable cause exists if:

(1) the owner or operator meets the requirements of Subsections (b)(1) and (b)(2) above, and

(2) the period of non-participation in the Program is less than six months, or the UST is less than ten years old.

KEY: hazardous substances, petroleum, underground storage tanks

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19-6-428

R315. Environmental Quality, Solid and Hazardous Waste. R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.

R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Executive Secretary, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Executive Secretary.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Executive Secretary has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Executive Secretary, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Executive Secretary on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Executive Secretary and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Executive Secretary.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Executive Secretary determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Executive Secretary may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Executive Secretary determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Executive Secretary will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63G Chapter 4, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Executive Secretary in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Executive Secretary not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

KEY: solid waste management, waste disposal

February 1, 2007

19-6-104

Notice of Continuation February 14, 2008

19-6-105

19-6-108

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-317. Other Processes, Variances, Violations, and
Petition for Rule Change.**

R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Executive Secretary upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted in accordance with Section R315-2-13.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Executive Secretary or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Executive Secretary may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Executive Secretary may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is served, the person specified therein files a written request, containing the information specified in Subsection 63G-4-201(3), for agency action before the Board as provided in Section R315-12-3. Title 63G, Chapter 4 and Rule R315-12 shall govern the conduct of hearings before the Board.

R315-317-4. Petition for Rule Change.

(1) The requirements of Section R315-317-4 shall apply to a petition for:

- (a) making a new rule;
- (b) amending, repealing, or repealing and reenacting and existing rule;
- (c) amending a proposed rule;
- (d) allowing a proposed rule or change in proposed rule to lapse; or
- (e) any combination of the above.

(2) Petition Procedure and Form.

(a) The petition shall be addressed and delivered to the Executive Secretary.

(b) The petition shall follow the requirements of Sections R15-2-3 through 5.

KEY: solid waste management, waste disposal

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19-6-109

19-6-111

19-6-112

R331. Financial Institutions, Administration.**R331-20. Designation of Adjudicative Proceedings as Informal.****R331-20-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Section 63G-4-202 and Subsection 7-1-301(15).

(2) This rule applies to all proceedings before the department.

(3) This rule designates all proceedings before the Department of Financial Institutions as informal hearings.

R331-20-2. Rule.

In accordance with Section 63G-4-202 all proceedings before the Department of Financial Institutions which are subject to the requirements of the Utah Administrative Procedures Act are designated informal proceedings.

KEY: financial institutions, government hearings**1995****63G-4-202****Notice of Continuation August 25, 2008****7-1-301(15)**

R331. Financial Institutions, Administration.**R331-21. Rule Governing Establishment of and Participation in Collective Investment Funds by Trust Companies.****R331-21-1. Authority, Scope, and Purpose.**

- (1) This rule is issued pursuant to Sections 7-1-301 and 7-5-13.
- (2) This rule applies to all trust companies conducting a trust business subject to the jurisdiction of the department.
- (3) This rule authorizes the establishment of and participation in collective investment funds by trust companies subject to the jurisdiction of the department.

R331-21-2. Definitions for Purposes of this Rule.

- (1) "Affiliate" means any company which controls, is controlled by, or is under common control with a trust company, and that is authorized to conduct a trust business by its applicable state or federal regulator.
- (2) "Collective investment fund" means a fund established and administered by a trust company or one of its affiliates, into which a trust company and one or more of its affiliates pool trust account funds for common investment.
- (3) "Commissioner" means the Commissioner of Financial Institutions.
- (4) "Control" means "control" as defined in Section 7-1-103.
- (5) "Department" means the Department of Financial Institutions.
- (6) "Trust business" means "trust business" as defined in Section 7-5-1(1)(b).
- (7) "Trust company" means any company authorized to engage in a trust business in Utah pursuant to Sections 7-5 et seq., or by federal law.

R331-21-3. Establishment of Collective Investment Funds.

- (1) Any trust company authorized to engage in the trust business in Utah may:
 - (a) Establish collective investment funds that authorize participation by fiduciary or trust accounts of the trust company, its affiliates or both; and
 - (b) Participate in collective investment funds established by an affiliate of the trust company, if:
 - (i) The affiliate is authorized under the laws of its chartering authority to establish a collective investment fund in which its affiliates may participate; and
 - (ii) The plan establishing the collective investment funds specifically authorize a participation by the trust company.
- (2) The common trust funds held by a trust company or its affiliate must be maintained exclusively for collective investment and reinvestment.
- (3) The plan establishing the collective investment fund must be approved by the trust company's board of directors and filed with the commissioner. A copy of the plan shall be available at the principal office of the trust company for public inspection during business hours and upon request a copy of the plan shall be furnished to any person who has a direct or indirect legal interest in such plan.
- (4) No trust company shall have any non-fiduciary interest in a collective investment fund. This limitation includes lending money to a fund, selling property to a fund, and purchasing property from a fund.
- (5) The trust company shall maintain adequate accounting records of the collective investment fund for periodic review by the department and federal regulatory agencies.

R331. Financial Institutions, Administration.**R331-24. Accounting for Accrued Uncollected Income by Banks and Industrial Loan Corporations.****R331-24-1. Authority, Scope, and Purpose.**

- (1) This rule is issued pursuant to Section 7-1-301(14).
- (2) This rule applies to all state chartered banks and industrial loan corporations.
- (3) The purpose of this rule is to establish accounting requirements for accrued uncollected income to help ensure accurate accounting of the income of banks and industrial loan corporations.

R331-24-2. Definitions.

- (1) "Accrual basis of accounting" means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether or not received.
- (2) "Business credit card" means a credit card extended to a person for business purposes with a sponsoring company directly or indirectly obligated for payment of any advances.
- (3) "Commissioner" means the Commissioner of Financial Institutions.
- (4) "Consumer loan" means credit extended for household, family, and personal expenditures, including credit cards, and loans secured by one to four-family residential properties.
- (5)(a) "Contractual commitment to advance funds" means:
 - (i) an obligation on the part of the bank or industrial loan corporation to make payments to a third party contingent upon default by the bank's or industrial loan corporation's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or
 - (ii) an obligation to guarantee or stand as surety for the benefit of a third party.
- (b) The term includes standby letters of credit, guarantees, puts, and other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" if it and all other outstanding loans to the borrower are within the bank's or industrial loan corporation's lending limit on the date of the commitment.
- (6) "In process of collection" means collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.
- (7) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. Loans and extensions of credit includes:
 - (a) A purchase under repurchase agreement of securities, other assets, or obligations other than investment grade securities in which the purchasing bank or industrial loan corporation has a perfected security interest with regard to the seller but not as an obligation of the underlying obligor of the security;
 - (b) An advance by means of an overdraft, cash item, or otherwise;
 - (c) A contractual commitment to advance funds;
 - (d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;
 - (e) A participation without recourse with regard to the participating bank or industrial loan corporation, but not the originating bank or industrial loan corporation; and
 - (f) Existing loans, leases, or advances which have been

charged off on the books of the bank or industrial loan corporation in whole or in part and which is legally enforceable, including statutory bad debt under Section 7-3-25 or 7-8-15 respectively.

- (8) "Loans or extensions of credit" does not include:
 - (a) A receipt by a bank or an industrial loan corporation of a check deposited in or delivered to the bank or industrial loan corporation in the usual course of business, unless it results in the carrying of a cash item for the granting of an overdraft, other than an inadvertent overdraft in a limited amount that is promptly repaid;
 - (b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the bank or industrial loan corporation, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring bank or industrial loan corporation;
 - (c) An endorsement or guarantee for the protection of a bank or industrial loan corporation of any loan or other asset previously acquired by the bank or industrial loan corporation in good faith, or any indebtedness to a bank or industrial loan corporation for the purpose of protecting the bank or industrial loan corporation against loss or of giving financial assistance to it;
 - (d) Non-interest bearing deposits to the credit of the bank or industrial loan corporation;
 - (e) The giving of immediate credit to a bank or industrial loan corporation upon uncollected items received in the ordinary course of business;
 - (f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing bank or industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;
 - (g) The sale of federal funds; or
 - (h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.
 - (9) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described, that represents an obligation to the beneficiary on the part of the issuer:
 - (a) To repay money borrowed by or advanced to or for the account of the account party; or
 - (b) To make payment on account of any indebtedness undertaken by the account party; or
 - (c) To make payment on account of any default by the account party in the performance of an obligation.
 - (10) "Well-secured" means a debt that is secured by:
 - (a) Collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt in full, including accrued interest; or
 - (b) The guarantee of a financially responsible party.
- R331-24-3. Accounting for Accrued Uncollected Income.**
- (1) General Rule:
A bank or industrial loan corporation that uses the accrual basis of accounting to prepare its financial statements shall, at each regularly scheduled board meeting, review all earned but uncollected income and determine the portion of it that is uncollectible. This determination shall be in accordance with generally accepted accounting principles. At a minimum, the

following events should stop the accrual of income:

(a) The accrual of interest income shall cease when any loan or extension of credit is contractually 90 days delinquent.

(i) For a monthly installment account, four payments delinquent is the equivalent of 90 days delinquent.

(ii) For a single-payment commercial account that calls for interest-only payments prior to maturity, the 90-day period commences with the interest-only due date.

(b) No further income may be recognized for a precomputed loan, lease, or discounted contract when it becomes 90 days delinquent.

(c) In restructuring a loan or extension of credit, a bank or industrial loan corporation may only capitalize or add to the new principal balance up to 90 days' interest, unless the board of directors specifically approves otherwise in writing at its next regularly scheduled meeting. If, at that meeting, the board fails to approve the capitalization of additional interest, the loan or extension of credit is considered to be more than 90 days delinquent, and the accrual of interest income shall cease.

(2) Exemptions:

Subsection (1) does not limit the accrual of interest income:

(a) for any consumer loan that is in the process of collection;

(b) for any business credit card balance that is in the process of collection;

(c) for loans or other debt instruments acquired at a discount (because there is uncertainty as to the amounts or timing of future cash flow) from an unaffiliated third party (such as another institution or the receiver of a failed institution), including those that the seller had maintained in nonaccrual status, and that met the amortization criteria specified in the AICPA Bulletin No. 6.

(d) for loans secured by a 1-to-4 family residential property. Nevertheless, such loans should be subject to other alternative methods of evaluation to assure the financial institution's net income is not materially overstated.

(e) for any other loan or lease that is both well-secured and in the process of collection;

(f) to the extent the commissioner provides an additional exemption from Subsection (1) by express, prior, written approval;

(3) Notwithstanding this rule, all extensions of credit are subject to Sections 7-3-25 and 7-8-15.

R331-24-4. Penalty for Violation.

Failure of management and the board of directors to make the review and determinations required by this rule, in good faith and in accordance with generally accepted accounting principles, constitutes grounds for supervisory sanction under Sections 7-1-307 and 7-1-308.

KEY: financial institutions

November 3, 1998

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7-1-301(14)

R398. Health, Community and Family Health Services, Children with Special Health Care Needs.

R398-1. Newborn Screening.

R398-1-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.

R398-1-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R398-1-8.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

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

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R398-1-3. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

(2) The Department of Health, after consulting with the Genetic Advisory Committee, will determine the Newborn Screening battery of tests based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

- (a) Biotinidase Deficiency;
- (b) Congenital Adrenal Hyperplasia;
- (c) Congenital Hypothyroidism;
- (d) Galactosemia;
- (e) Hemoglobinopathy;
- (f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1 (fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (arginino succinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyrroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;

(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);

(vii) Carnitine Palmitoyl Transferase I Deficiency;

(viii) Carnitine Palmitoyl Transferase 2 Deficiency;

(ix) Carnitine Acylcarnitine Translocase Deficiency;

(x) Multiple Acyl CoA Dehydrogenase Deficiency;

(h) Organic Acids Disorders:

(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);

(ii) Methylmalonic acidemia (multiple enzymes);

(iii) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);

(iv) 2-Methylbutyryl CoA dehydrogenase deficiency;

(v) Isobutyryl CoA dehydrogenase deficiency;

(vi) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;

(vii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);

(viii) 3-Methylcrotonyl CoA carboxylase deficiency;

(ix) 3-Ketothiolase deficiency;

(x) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;

(xi) Holocarboxylase synthase (multiple carboxylases) deficiency; and

(i) Cystic Fibrosis.

R398-1-4. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R398-1-5. Timing of Collection of First Specimen.

The first specimen shall be collected between 48 hours and five days of age. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R398-1-6. Parent Education.

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R398-1-7. Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R398-1-8. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

(d) Not alter the Newborn Screening form in any way;

(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn

Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 46 North Medical Drive, Salt Lake City, Utah 84113.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R398-1-9. Abnormal Result.

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

(1) If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the medical home/practitioner noted on the Newborn Screening form.

(2) The medical home/practitioner shall submit an appropriate specimen in accordance with Section R398-1-8. The specimen shall be collected and submitted within two days of notice, and the form shall be labeled for testing as directed by the Department.

(3) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the medical home/practitioner to have an appropriate specimen collected.

R398-1-11. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Family Health Services, Newborn Screening Program, P.O. Box 144710, Salt Lake City,

UT 84114-4710.

R398-1-12. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R398-1-13. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R398-1-14. Confidentiality and Related Information.

(1) The Department releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R398-1-9(1).

(3) The Department releases information to the medical home/practitioner noted on the Newborn Screening form for timely and effective referral for diagnostic services or to ensure appropriate management for individuals with confirmed diagnosis.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R398-1-15. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R398-1-16. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and

autoclave the blood spots.

R398-1-17. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R398-1-18. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: health care, newborn screening

June 25, 2008

Notice of Continuation September 20, 2004, (c), (d), and (g)

26-1-6

26-10-6

R410. Health, Health Care Financing.**R410-14. Administrative Hearing Procedures.****R410-14-1. Introduction and Authority.**

(1) Division policy is to resolve disputes at the lowest level. This rule is not meant to foreclose the Division's preference for informal resolutions through open discussion and negotiation between the Division and aggrieved persons.

(2) This rule is authorized by Section 1902(a)(3) SSA, 42 CFR 431, Subpart E, and Sections 26-1-24, 26-18-2.3, and 63G-4-102.

R410-14-2. Definitions.

(1) The definitions in R414-1 and Section 63G-4-103 apply to this rule.

(2) In addition, as used in this rule:

(a) "Action" means a denial, termination, suspension, or reduction of Medicaid or UMAP covered services regarding an applicant or a recipient; or a reduction or denial of reimbursement for services.

(b) "Aggrieved Person" means any applicant, recipient, or provider adversely affected by any action or inaction of DHCF.

(c) "Applicability" means a determination of whether a statute, rule, or order should be applied, and if so, how the law as stated should be applied to specific facts and circumstances.

(d) "Date of Action" means the date on which a denial of eligibility, or termination, suspension, or reduction of Medicaid or UMAP covered services becomes effective, regarding an applicant or recipient; or regarding a provider, the date on which:

(i) a reduction or denial of reimbursement or a sanction becomes effective;

(ii) notice is given of licensing deficiencies; or

(iii) notice is given that DHCF will not accept a Plan of Correction of survey deficiencies required by licensing.

(e) "Order" means an agency action of particular applicability, issued by the presiding officer, that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons.

R410-14-3. Administrative Hearing Procedures.

(1) All Title XIX (Medicaid) or Utah Medical Assistance Program (UMAP) applicants, recipients, or providers aggrieved by any action or inaction of the Department of Health (DOH), Division of Health Care Financing (DHCF), may file a written request for agency action pursuant to 63G-4-201 and in accordance with this rule. All proceedings before DHCF, except as otherwise set forth, shall be conducted as a formal hearing. DHCF conducts hearings on many subjects including the following:

(a) PASARR Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all residents and potential residents of a nursing facility (whether Medicaid eligible or otherwise) who disagree with the pre-admission screening and appropriateness of placement decision made by DHCF, shall be given an opportunity for a hearing upon written request. All PASARR hearings as set forth above shall be conducted as a formal hearing in accordance with R410-14-11.

(b) Nurse Aide Registry Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all nurse aides employed by a certified nursing facility who have successfully completed and passed the nurse aide training and competency evaluation program, or both, shall be identified on a nurse aide registry. In addition, such nurse aides shall be subject to investigation upon allegations of resident abuse, neglect, or misappropriation of resident property. DHCF or its designated agents is responsible

to investigate complaints. Before a substantiated claim can be entered into the registry, the nurse aide, upon written request, is entitled to a hearing to be conducted by DHCF or its designated agents. All nurse aide registry hearings as set forth above shall be conducted as formal hearings in accordance with R410-14-11.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility/Mentally Retarded (ICF/MR) Hearings. As provided by 42 CFR 431, Subpart D, DHCF must, for any SNF, ICF and ICF/MR, provide for appeals procedures that, as a minimum, satisfy the requirements of 42 CFR 431.153 through 431.155. Hearings shall be conducted as a formal hearing in accordance with R410-14-11.

(d) Informal Hearings. "Residents' Rights Hearings." As provided by Section 1919 of Title XIX of the Social Security Act, all residents of a nursing facility (whether Medicaid eligible or otherwise) have certain specific "residents' rights" and may be aggrieved by action or inaction of a nursing facility in the meeting of those rights. Responsibility for enforcing nursing home compliance with the residents' rights requirement rests with DHCF. All "resident rights" hearings shall be conducted as an informal hearing.

(2) A hearing is not required and will not be granted to an applicant, recipient, or provider if the sole issue is a federal or state law or policy requiring an automatic change in covered services adversely affecting some or all applicants, recipients, or providers (42 CFR 431.220).

(3) EXCEPT AS SPECIFIED HEREIN, R410-14 ONLY APPLIES TO TITLE XIX MEDICAID OR UMAP RECIPIENTS OR PROVIDERS. This rule does not apply to initial applications for medical assistance. A Medicaid or UMAP applicant who has been denied eligibility for medical assistance through the local Office of the Department of Workforce Services (DWS) must contact the Department of Workforce Services for a hearing.

(4) If eligibility for a non-medical assistance program in addition to Medicaid or UMAP is at issue, the Medicaid or UMAP eligibility determination hearing shall be conducted by the Department of Workforce Services (DWS) through the Office of Administrative Hearings. Requests for such hearings shall be sent to the address in R410-14-3(3). All hearings shall be conducted according to DWS hearing rules. DWS shall propose a recommended decision concerning the medical assistance issue only and shall submit it to the Executive Director of DOH or his designated representative for review and final agency order.

(5) DWS shall forward all requests for hearings to consider eligibility for medical assistance only to DHCF. A formal hearing in accordance with the hearing procedures herein shall be conducted by DHCF.

R410-14-4. Availability of Hearing.

If there is no disputed issue of fact, the presiding officer may make a determination without an evidentiary hearing.

R410-14-5. Notice.

(1) DHCF shall give advance written notice to each individual who is affected by an adverse action taken by DHCF, in accordance with R410-14-8.

(2) A notice under this section must contain:

(a) a statement of the action DHCF intends to take;

(b) the date the intended action takes effect;

(c) the reasons for the intended action;

(d) the specific regulations that support, or the change in federal or state law or policy, that requires the action;

(e) the aggrieved person's right to request a formal hearing before DHCF, when applicable, and the method by which such hearing may be obtained from DHCF;

(f) a statement that the aggrieved person may represent

himself or use legal counsel, relative, friend or other spokesman at the formal hearing; and,

(g) if applicable, an explanation of the circumstances under which Medicaid or UMAP coverage or reimbursement will be continued if a formal hearing is timely requested.

(3) DHCF shall mail advance notice at least ten calendar days before the date of the intended action EXCEPT as noted below:

(a) DHCF may mail a notice not later than the date of action if:

(i) DHCF has factual information confirming the death of a recipient or provider;

(ii) DHCF receives a clear, written statement signed by a recipient or provider that:

(A) he no longer wishes services or reimbursement, or
(B) he gives information that requires termination or reduction of services or reimbursement and understands that this must be the result of supplying that information;

(iii) the recipient has been admitted to an institution where he is ineligible under the State Plan for further services;

(iv) the recipient's or provider's whereabouts are unknown and the Post Office returns DHCF mail directed to him indicating no forwarding address;

(v) DHCF establishes the fact that the recipient has been accepted for Medicaid/UMAP services by another local jurisdiction, State, Territory or Commonwealth;

(vi) a change in the level of medical care is prescribed by the recipient's physician; or

(vii) a termination, suspension, or reduction of Medicaid or UMAP covered services or reimbursement is necessitated by an imminent peril to the public health, safety, or welfare.

(b) DHCF may shorten the period of advance mailed notice to five days before the date of action if:

(i) DHCF has facts indicating that action should be taken because of probable fraud by the applicant or recipient or provider; and

(ii) the facts have been verified, by affidavit, if possible.

R410-14-6. Request for Formal Hearing.

(1) DHCF shall conduct formal hearings on all "medical assistance only" issues.

(2) An aggrieved person may request a formal hearing within the following deadlines, depending upon the type of request:

(a) An aggrieved Medicaid provider may request a formal hearing within 30 calendar days from the date written notice is issued or mailed, whichever is later.

(b) An aggrieved Medicaid or UMAP applicant or recipient may request a formal hearing regarding eligibility for "medical assistance only" within 90 calendar days from the date written notice is issued or mailed, whichever is later.

(c) An aggrieved UMAP or Medicaid applicant or recipient may request a formal hearing regarding scope of service within 30 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of a person's due process rights. A request for a hearing shall be in writing, shall be dated, and shall explain the reasons for which the hearing is requested. An aggrieved person may use the hearing request form which is attached to all negative eligibility action notices, which is entitled "Requests for Hearing/Agency Action."

(4) The address for submitting a "Request for Hearing/Agency Action" for: (a) Medicaid or UMAP providers; and (b) Medicaid or UMAP eligibility hearings or scope of service hearings is as follows:

Division of Health Care Financing
Office of Hearings and Appeals

Box 142901

Salt Lake City, Utah 84114-2901

(5) DHCF shall schedule a hearing or begin negotiations in the matter in writing within 30 days of the date of issuance of the request for formal hearing or agency action.

(6) DOH or DHCF may deny or dismiss a request for a formal hearing if:

(a) The aggrieved person withdraws the request in writing;

(b) The aggrieved person fails to appear at or participate in a scheduled hearing or prehearing without good cause;

(c) The aggrieved person prolongs the hearing process without good cause;

(d) The aggrieved person's whereabouts is unknown as indicated by return of agency mail without forwarding address;

(e) The provider fails to allow DHCF access to its records pursuant to R410-14-18(2)(b);

(f) A party does not respond, when requested, to any correspondence made in connection with the matter by the presiding officer, such as failure to provide relevant medical records.

R410-14-7. Reinstatement/Continuation of Services.

(1) DHCF may reinstate services for recipients or suspend any adverse action for providers if the aggrieved person requests a formal hearing not more than ten calendar days after the date of action.

(2) DHCF must reinstate or continue services for recipients or suspend adverse actions for providers until a decision is rendered after a formal hearing if:

(a) adverse action is taken without giving the ten day advance mailed notice to a recipient or provider in all circumstances where such advance notice is required;

(b) in those circumstances where advance notice is not required, the aggrieved person requests a formal hearing within ten calendar days following the date the adverse action notice is mailed; or

(c) DHCF determines that the action resulted from other than the application of federal or state law or policy.

R410-14-8. Notice of Formal Hearing.

DHCF shall notify the aggrieved person or his attorney, in writing, of the date, time, and place of the hearing. Notice shall be mailed not less than ten calendar days before the scheduled date of the formal hearing.

R410-14-9. Form of Papers.

(1) All papers to be filed in a formal proceeding shall:

(a) Be typewritten or legibly hand-written;

(b) Bear a caption clearly showing the title of the hearing;

(c) Bear the docket number, if any;

(d) Be dated and signed by the party or his authorized representative;

(e) Contain the address and telephone number of the party or his representative, if any; and

(f) Consist of an original and two copies filed with DHCF.

(2) Hearings may be delayed until the requirements of this section are met.

R410-14-10. Service.

(1) The party filing papers and documents shall serve them upon all parties to the formal proceeding. Proof of service shall be filed with DHCF.

(2) Service shall be personally delivered or by mail, properly addressed with postage prepaid, one copy to each entitled party. If a party is represented, service upon the representative is sufficient service upon the party.

(3) Proof of service shall be by certificate, affidavit, or acknowledgment.

(4) Wherever notice by DHCF is required, notification

shall be effective upon the date of first class mailing to the party's residence or business address.

(5) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-11. Intervention.

As permitted by Section 63G-4-207, a person may intervene if:

(1) The person petitions for leave to intervene at least seven days before the scheduled hearing, unless otherwise permitted by the presiding officer.

(2) The petition must contain a clear and concise statement of the direct and substantial interest of the person seeking leave to intervene in the hearing.

(3) Persons seeking affirmative relief shall state the basis of such relief.

(4) Other parties to the hearing have an opportunity to support or oppose intervention in a manner permitted by the presiding officer.

(5) The presiding officer may grant leave to intervene subject to such reasonable conditions as he may prescribe. An intervenor may be dismissed from the hearing if it appears that he has no direct or substantial interest in the hearing.

R410-14-12. Conduct of Hearing.

(1) Hearings shall be conducted according to 63G-4-206, and as described in R414-14.

(2) Formal hearings shall be conducted by an impartial presiding officer who is appointed by DOH. The presiding officer shall be empowered with such authority as granted by Sections 63G-4-102 through 503, except as may be limited by R410-14. No presiding officer shall have been directly involved in the initial determination of the action in question.

(3) The presiding officer may elect to hold a pre-hearing meeting for any of the following reasons:

(a) to formulate or simplify the issues;

(b) to obtain admissions of fact and documents, that will avoid unnecessary proof;

(c) to arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) to outline procedures to be followed at the formal hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing, or a settlement.

(f) Agreements reached during the conference shall be recorded, or the parties may enter into a written stipulation, or agree to a statement made on the record by the presiding officer.

(4) All formal hearings may be conducted only after adequate written notice of the hearing has been served on all parties setting forth the time, date and place of the hearing.

(5) Testimony shall be taken under oath or affirmation administered by the presiding officer.

(6) Each party has the right to:

(a) call and examine parties and witnesses;

(b) introduce exhibits;

(c) question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination;

(d) impeach any witness regardless of which party first called him to testify; and

(e) rebut the evidence against him.

(7) The rules of evidence as applied in civil actions in the courts of this state shall be generally followed in the hearings. Any relevant evidence may be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient by itself to support a finding unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by

law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) The presiding officer may question any party or witness and may admit any evidence he believes is relevant or material.

(9) The presiding officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The presiding officer may determine the order in which evidence will be received.

(10) The presiding officer shall maintain order, and may recess the hearing for the time necessary to regain order, if a person engages in disrespectful, disorderly, or contumacious conduct. The presiding officer may take measures to remove a person, including participants, from the hearing, if necessary, to maintain order. If a participant shows persistent disregard on matters of order and procedure, the presiding officer may enter a sanction on the person, including: restricting the person's participation, striking pleadings or evidence, or issuing an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency.

(12) The moving party has the burden of proving by a preponderance of the evidence whatever facts it must establish to sustain its position.

R410-14-13. Ex Parte Communications.

(1) Except as otherwise provided below, ex parte communications are prohibited.

(2) The presiding officer shall decline to listen to or accept any communication offered in violation of this rule and shall explain to the offeror that any communication received off the record and in violation of this rule must be made a part of the record and furnished to all parties.

(3) This rule shall not apply to communications concerning status of the hearing and uncontested procedural matters.

R410-14-14. Continuances or Further Hearings.

(1) The presiding officer may continue a formal hearing to another time or place, or order a further hearing on his own motion or upon the showing of good cause, at the request of any party.

(2) If the presiding officer determines that additional evidence is necessary for the proper determination of the case, he may, at his discretion, continue the hearing to a later date and order the party to produce additional evidence, or close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

(3) Written notice of the time and place of a continued or further hearing shall be given in accordance with R410-14-7, except when a continuance is ordered during a hearing and adequate oral notice is given.

R410-14-15. Record.

A complete record of all formal hearings is made by the presiding officer. The recording shall be transcribed if requested by a party to the hearing. The requesting party shall pay the costs of transcription and copying. DHCF shall maintain the complete record of the hearing in a secure area. The record is the sole property of DHCF. DHCF or its designated agent shall retain recordings of formal hearings for a period of one year. Written records and documents shall be retained for a period not to exceed three years.

R410-14-16. Proposed Decision and Final Agency Review.

(1) At the conclusion of the formal hearing, the presiding

officer shall take the matter under advisement and shall submit to the Executive Director of DOH or his designated representative a recommended decision, based on the evidence and testimony introduced in the proceeding.

(2) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.

(3) The Executive Director of DOH or his designated representative may:

(a) adopt the proposed decision, or any portion of the decision;

(b) reject the proposed decision, or any portion of the decision, and make his own independent determination based upon the record; or

(c) remand the matter to the presiding officer to take additional evidence, and the presiding officer thereafter shall submit to the Executive Director of DOH or his designated representative a new recommended decision; or

(d) send the proposed decision to the parties for comments prior to taking any of the above actions.

(4) The decision of the Executive Director or his designated representative constitutes final administrative action, and is subject to judicial review in accordance with the procedures set forth in R410-14-17.

(5) The aggrieved person or his representative shall be notified of the final administrative action and the aggrieved person's right to judicial review of the action.

R410-14-17. Agency Review.

An aggrieved person may move for reconsideration of DHCF's final administrative action, in accordance with Sections 63G-4-301 and 302. A person may seek review of a DWS final agency order concerning eligibility for medical assistance by filing a written request for review with DHCF in accordance with Section 63G-4-301.

R410-14-18. Judicial Review.

Judicial review shall be obtained according to Sections 63G-4-102 and 63G-4-401 through 405 and Section 78-2a-3.

R410-14-19. Discovery.

(1) The Utah Rules of Civil Procedure are inapplicable to these proceedings and no formal discovery except as set forth in this rule is permitted.

(2) Unless otherwise limited by order of the presiding officer, the scope of discovery in formal adjudicative proceedings is as follows:

(a) DHCF shall be permitted to review all records pertinent to the hearing that are in the custody or control of the applicant or recipient and the applicant or recipient's health care providers. DHCF shall give at least three days written notice to the custodian of such document(s).

(b) A provider shall allow DHCF to inspect its records that are pertinent to the hearing. Inspection shall be made at the provider's business office during regular working hours and after at least three days written notice.

(3) Upon written request at least three days prior to the hearing, the aggrieved person or his representative shall be permitted to examine all DHCF's documents and records for the formal hearing. The aggrieved party may request the Medicaid Management Information System (MMIS) claim file upon 15 calendar days request.

(4) The presiding officer may order the taking of interrogatories and depositions, set appropriate time-frames, assess sanctions for non-compliance, and assess the expense to the requesting party if the presiding officer determines such to be proper.

(5) The presiding officer may permit the filing of Requests for Admission, set appropriate time-frames for responses, and assess sanctions for non-compliance.

(6) The presiding officer may order at DHCF expense a medical assessment in order to obtain information necessary for a fair decision. This information is subject to confidentiality requirements and shall be made a part of the formal hearing record.

R410-14-20. Witnesses and Subpoenas.

(1) A party shall arrange for the presence of his witnesses at the hearing.

(2) A subpoena to compel the attendance of a witness or the production of evidence may be issued by the presiding officer, upon written request by a party and a sufficient showing of need.

(3) A subpoena may also be issued by the presiding officer on his own motion.

(4) An application for subpoena for the production by a witness of books, papers, correspondence, memoranda, or other records shall be made by affidavit to the presiding officer. The application must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, that the applicant seeks;

(c) a showing that the material requested is relevant to the issue involved in the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(5) The applicant shall arrange to serve all subpoenas that the presiding officer issues to him. A copy of the affidavit presented to the presiding officer shall be served with the subpoena.

(6) Except for employees of DOH, witnesses subpoenaed for any hearing are entitled to appropriate fees and mileage. The witness shall file a written demand for the fees with the presiding officer not later than ten days after the date the witness appeared at the hearing.

(7) The presiding officer may issue an order of default against any party who fails to obey an order entered by the presiding officer.

R410-14-21. Declaratory Orders.

(1) Declaratory orders shall be issued according to R380-1, and as described in R410-14-20.

(2) Copies of approved forms to petition for declaratory orders are available from DHCF upon request.

(3) If DHCF has not issued a declaratory order within 60 days after receipt of the request, the petition is denied.

(4) DHCF shall retain the request for declaratory ruling in its records.

(5) DHCF shall not issue a declaratory order if an adjudicative proceeding involving the same parties and issue is pending before the Agency or the courts.

KEY: Medicaid

June 9, 2008

Notice of Continuation October 29, 2007

26-1-24

26-1-5

26-18-2.3

63G-4-102

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(21) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(22) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(23) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective July 1, 2008. It also incorporates by reference State Plan Amendments that become effective no later than July 1, 2008.

(2) The Department adopts the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, July 1, 2008, as applied in Rule R414-

70.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR

Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not

specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) Prior authorization is a utilization control process to verify that the client is eligible to receive the service and that the service is medically necessary. Prior authorization requirements are identified in Section I sub-section 9 of the Utah Medicaid Provider Manual. Additional prior authorization instructions for specific types of providers is found in Section II of the Medicaid Provider Manual. All necessary medical record documentation for prior approval must be submitted with the request. If the provider has not followed the prior authorization instructions and obtained prior authorization for a service identified in the Medicaid Provider Manual as requiring prior authorization, the Department shall not reimburse for the service.

(4) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(5) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(6) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to

the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: Medicaid**August 4, 2008****Notice of Continuation April 16, 2007****26-1-5****26-18-1**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-70. Medical Supplies, Durable Medical Equipment, and Prosthetic Devices.****R414-70-1. Introduction and Authority.**

(1) This rule governs the provision of medical supplies, durable medical equipment (DME), and prosthetic device services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-2.3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-70-2. Definitions.

As used in this rule:

(1) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury; and

(d) is suitable for use in the home.

(2) "Entitled to nursing facility services" means an individual who:

(a) is in a nursing facility and whose nursing facility stay is covered by Medicaid; or

(b) is receiving services in a waiver program for individuals who require nursing facility level of care.

(3) "Individual eligible for optional services" means an individual who is not entitled to nursing facility services.

(4) "Individual entitled to mandatory services" means an individual who is entitled to nursing facility services.

(5) "Medical supplies" means items for medical use that are suitable for use in the home and that are disposable or semi-disposable and are non-reusable.

(6) "Medical Supplies Manual and List" means services described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced Attachment, Medical Supplies List, as incorporated at R414-1-5(2).

(7) "Prosthetic device" means replacement, corrective, or supportive devices that are suitable for use in the home, such as braces, orthoses, or prosthetic limbs prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformities or malfunction; or

(c) support a weak or deformed portion of the body.

R414-70-3. Services.

(1) Medical supplies, DME, and prosthetic devices are optional services.

(2) Medical supplies, DME, and prosthetic devices are limited to services described in the Medical Supplies Manual and List.

(3) The Medical Supplies Manual and List specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Medical supplies, DME, and prosthetic devices may be provided to an individual only as part of a written plan that is reviewed at least annually by a physician.

R414-70-4. Services for Individuals Eligible for Optional Services.

(1) An individual eligible for optional services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies Manual and List.

(2) An individual eligible for optional services must meet the criteria established in the Medical Supplies Manual and List and obtain prior approval if required.

R414-70-5. Services for Individuals Eligible for Mandatory Services.

(1) An individual entitled to mandatory services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies Manual and List.

(2) An individual eligible for mandatory services must meet the criteria established in the Medical Supplies Manual and List and obtain prior approval if required.

(3) An individual entitled to mandatory services may request an agency review to seek medical supplies and DME not listed in the Medical Supplies Manual and List.

R414-70-6. Services for Individuals Residing in Long Term Care Facilities.

(1) The Department provides medical supplies, DME, and prosthetic devices to individuals residing in a nursing care facility or an ICF/MR as part of the per diem payment.

(2) An individual residing in a nursing care facility or ICF/MR may receive additional medical supplies, DME, and prosthetic devices only as specifically indicated on the Medical Supplies Manual and List.

(3) An individual residing in a nursing care facility or an ICF/MR may request an agency review to seek medical supplies and DME not listed in the Medical Supplies Manual and List.

R414-70-7. Less Costly Alternative.

The Department may provide at its discretion services not described in the Medical Supplies Manual and List as provided in R414-1-6(2)(dd).

R414-70-8. Reimbursement.

Medical supplies, DME, and prosthetic devices are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, medical supplies, durable medical equipment, prosthetics

August 4, 2008

26-1-5

26-18-2.3

26-18-3

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 treats unearned 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) The Department disregards earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined 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. This income is also excluded for individuals described in 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XII), 1902(a)(10)(A)(ii)(XIII), 1902(a)(10)(A)(ii)(XVIII), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act. The Department does not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(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

Investment Act (WIA).

(4) For Family Medicaid, the AFDC \$30 and 1/3 of earned income deduction is allowed if the wage earner has received 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) The Department determines countable net income from self-employment by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 percent flat rate exclusion amount, the Department allows actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per month per child under age 2 and \$175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to \$160.00 per month per child under age 2 and \$140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) The Department excludes earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.110, 435.112 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.222, 435.223, and 435.300 through 435.310 and individuals defined in Title XIX of the Social Security Act Sections 1902(a)(10)(A)(i)(III), (IV), (VI), (VII), 1902(a)(10)(A)(ii)(XVII), 1902(a)(47), 1902(e)(1), (4), (5), (6), (7), and 1931(b) and (c), 1925 and 1902(l). The Department does not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost-of-care contribution for long-term care recipients.

(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:

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

September 1, 2008

26-18-1

Notice of Continuation January 25, 2008

R430. Health, Health Systems Improvement, Child Care Licensing.**R430-50. Residential Certificate Child Care.****R430-50-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of residentially certified child care providers who care for one to eight children in their home. It establishes minimum requirements for the health and safety of children in the care of residentially certified providers.

R430-50-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, saliva, or breast milk.

(2) "Certificate holder" means the person holding a Department of Health child care certificate.

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

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies.

(10) "Parent" means the parent or legal guardian of a child in care.

(11) "Physical abuse" means causing nonaccidental physical harm to a child.

(12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(13) "Protective cushioning" means stationary play equipment cushioning material that is approved by the American Society for Testing and Materials or the Consumer Products Safety Commission. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(14) "Protrusion hazard" means a component or piece of hardware that could impale or cut a child if the child falls against it.

(15) "Provider" means the certificate holder or a substitute.

(16) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(17) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(18) "School age" means kindergarten and older age children.

(19) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(20) "Sexually explicit material" means any depiction of

sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(21) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(22) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(23) "Strangulation hazard" means something on which a child's clothes or something around a child's neck could become caught on a component of playground equipment. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(25) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.

(26) "Toddler" means a child aged 12 months but less than 24 months.

(27) "Unrelated children" means children who are not related children.

(28) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(29) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-50-3. Certificate Required.

(1) A person must either be certified under this rule or licensed under R430-90, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not issue certificates, nor is a certificate required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-50-4. Indoor Environment.

(1) The certificate holder shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the certificate holder shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(5) The certificate holder shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The certificate holder shall maintain adequate light

intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(7) For certificate holders who receive an initial certificate after 1 September 2008 there shall be at least 35 square feet of indoor play space for each child, including the providers' related children who are ages four through twelve and not counted in the provider to child ratios.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(9) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-50-5. Cleaning and Maintenance.

(1) The certificate holder shall ensure that a clean and sanitary environment is maintained.

(2) The certificate holder shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The certificate holder shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The certificate holder shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-50-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) For certificate holders who receive an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by children, the outdoor play area shall be free of trash and animal excrement.

(7) If a wading pool is used:

(a) a provider must be at the pool supervising each child

whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(8) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(9) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(10) If a fence is required in Subsections (3), (4) or (9)(b), there shall be no gap greater than five inches in the fence, nor shall any gap between the bottom of the fence and the ground be greater than five inches.

(11) Certificate holders who were issued a certificate prior to 1 September 2008 who do not have a fence as required by Subsections (3), (4), or (9)(b) shall have until 1 September 2011 to meet this requirement.

(12) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.

(13) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(14) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6 feet away from any structure, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under an above ground trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.

(15) Outdoor stationary play equipment used by any child in care shall be located over grass or 6" of protective cushioning. If sand, gravel, or shredded tires are used as protective cushioning, the certificate holder shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the required depth.

(16) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(17) There shall be no protrusion hazard or strangulation hazard in or adjacent to the use zone of any piece of stationary play equipment.

(18) There shall be no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(19) The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-50-7. Personnel.

(1) The certificate holder and all substitutes must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) The certificate holder may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the certificate holder.

(3) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid and CPR, and TB screening requirements of this rule.

(4) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the certificate holder may assign an emergency substitute who has not had a criminal background screening to care for the children. The certificate holder may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the certificate holder that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The certificate holder shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(5) Any new non-emergency substitute or volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

(a) specific job responsibilities;

(b) the certificate holder's emergency and disaster plan;

(c) the current child care certificate rules found in Sections R430-50-11 through 24;

(d) introduction and orientation to the children in care;

(e) a review of the information in the health assessment for each child in care;

(f) procedure for releasing children to authorized individuals only;

(g) proper clean up of body fluids;

(h) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(i) obtaining assistance in emergencies; and

(j) if the certificate holder accepts infants or toddlers for care, orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(6) Substitutes who care for children an average of 10 hours per week or more and the certificate holder shall complete a minimum of 10 hours of training each year, based on the certificate date. A minimum of 5 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All non-emergency substitutes who begin employment partway through the certificate year shall complete a proportionate number of training hours based on the number of months worked prior to the certificate renewal date.

(c) Annual training hours shall include the following topics at least once every two years:

(i) a review of all of the current child care certificate rules found in Sections R430-50-11 through 24;

(ii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iii) principles of child growth and development, including development of the brain; and

(iv) positive guidance; and

(d) if the certificate holder accepts infants or toddlers for care, required training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

R430-50-8. Administration.

(1) The certificate holder is responsible for all aspects of the operation and management of the child care program.

(2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the certificate holder or a substitute with authority to act on behalf of the certificate holder shall be present whenever there is a child in care.

(6) Each week, the certificate holder shall be present at the

home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The certificate holder shall inform the parents of each child in care and the Department of any changes to the certificate holder's telephone number within 48 hours of the change.

(8) The certificate holder shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The certificate holder shall also mail or fax a written report to the Department within five days of the incident.

(9) The certificate holder shall train and supervise all substitutes to:

- (a) ensure their compliance with this rule;
- (b) ensure they meet the needs of the children in care as specified in this rule; and
- (c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-50-9. Records.

(1) The certificate holder shall maintain on-site for review by the Department during any inspection the following general records:

- (a) documentation of the previous 12 months of semi-annual fire drills and annual disaster drills as specified in R430-50-10(7) and R430-50-10(9);
- (b) current animal vaccination records as required in R430-50-22(2)(b);
- (c) a six week record of child attendance, as required in R430-50-13(3);
- (d) all current variances granted by the Department;
- (e) a current local health department kitchen inspection;
- (f) an initial local fire department clearance for all areas of the home being used for care;
- (g) approved initial "CBS/MIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and each person age 12 and older who resides in the certificate holder's home;
- (h) if the certificate holder has been certified for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal; and
- (g) if the certificate holder has been certified for more than a year, the most recent "Request for Annual Renewal of CBS/MIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal.

(2) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

- (a) an admission form containing the following information for each child:
 - (i) name;
 - (ii) date of birth;
 - (iii) date of enrollment;
 - (iv) the parent's name, address, and phone number, including a daytime phone number;
 - (v) the names of people authorized by the parent to pick up the child;
 - (vi) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;
 - (vii) child health information, as required in R430-50-14(6); and

(viii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-50-14(4) and (5);

(c) a completed transportation permission form, if transportation services are offered to any child in care; and

(d) a six week record of medication permission forms, and a six week record of medications actually administered, as specified in R430-50-17(4) and R430-50-17(6)(f), if medications are administered to any child in care.

(3) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for the certificate holder and each non-emergency substitute:

- (a) results of an initial TB screening, as required in R430-50-16(10) and (11);
 - (b) orientation training documentation for all non-emergency substitutes as required in R430-50-7(5);
 - (c) annual training documentation for the past two years, for the certificate holder and all non-emergency substitutes, as required in R430-50-7(6)(a); and
 - (d) current first aid and CPR certification, as required in R430-50-10(2) and R430-50-20(3)(d).
- (4) The certificate holder shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-50-7(5).
- (5) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

R430-50-10. Emergency Preparedness.

(1) The certificate holder shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The certificate holder and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The certificate holder shall maintain first aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(4) The certificate holder shall have an emergency and disaster plan which shall include at least the following:

- (a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;
- (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;
- (c) the location of and procedure for emergency shut off of gas, electricity, and water;
- (d) procedures to be followed if a child is missing;
- (e) the name and phone number of a substitute to be called in the event the certificate holder must leave the home for any reason; and

(f) an emergency relocation site where children will be housed if the certificate holder's home is uninhabitable.

(5) The certificate holder shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The certificate holder shall conduct fire evacuation drills semi-annually. Drills shall include complete exit of all children and staff from the home.

(7) The certificate holder shall document all fire drills, including:

- (a) the date and time of the drill;
 - (b) the number of children participating;
 - (c) the total time to complete the evacuation; and
 - (d) any problems encountered.
- (8) The certificate holder shall conduct drills for disasters other than fires at least once every 12 months.

(9) The certificate holder shall document all disaster drills, including:

- (a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;
 - (b) the date and time of the drill;
 - (c) the number of children participating;
 - (d) the total time to complete the evacuation; and
 - (e) any problems encountered.
- (10) The certificate holder shall vary the days and times on which fire and other disaster drills are held.

R430-50-11. Supervision and Ratios.

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

- (a) awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
- (b) monitoring of each sleeping infant in one of the following ways:
 - (i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;
 - (ii) by in person observation of each sleeping infant at least once every 15 minutes; or
 - (iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

- (a) a provider can hear the children playing outdoors; and
- (b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

- (a) the certificate holder has prior written permission from the child's parent for the child's participation; and
- (b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(7) through (9).

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

- (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a locked cabinet or area, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes and cords long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

R430-50-13. Parent Notification and Child Security.

(1) The certificate holder shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the certificate holder's home and outdoor area that are used for child care.

(3) The certificate holder shall ensure that a daily attendance record is maintained to document each enrolled child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The certificate holder shall ensure that parents are informed of every incident, accident, or injury involving their child within 24 hours of occurrence.

(6) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(7) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately.

R430-50-14. Child Health.

(1) The certificate holder shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) The certificate holder shall not enroll any child for care

without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The certificate holder shall not shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The certificate holder shall not admit any child for care without the following written health information from the parent:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the certificate holder.

(7) The certificate holder shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-50-15. Child Nutrition.

(1) If food service is provided:

(a) The certificate holder shall ensure that his or her meal service complies with local health department food service regulations.

(b) The current week's menu shall be available for parent review.

(2) The certificate holder shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. The provider shall not place food on a bare table.

(4) The certificate holder shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed.

R430-50-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;

(d) after using the toilet or helping a child use the toilet;

(e) after coming into contact with any body fluid, including breast milk;

(f) after playing with or handling animals;

(g) when coming in from outdoors; and

(h) before administering medication.

(2) The certificate holder shall ensure that each child washes his or her hands with soap and running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with any body fluid;

(d) after playing with animals; and

(e) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider,

volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) The certificate holder shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(5) The certificate holder shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(6) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(7) The certificate holder shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(8) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The certificate holder shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(9) If a water play table or tub is used, the certificate holder shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(10) All providers who provide care an average of 10 hours or more each week shall be tested for tuberculosis (TB) using a testing method and follow-up that is acceptable to the Department. Testing shall take place prior to certification, and for each substitute within two weeks of assuming duties.

(11) If the TB test is positive, the person shall provide documentation from a health care provider detailing:

(a) the reason for the positive reaction;

(b) whether the person is contagious; and

(c) if needed, how the person is being treated.

(12) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(13) An individual having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating the individual is exempt from testing, with an associated time frame, if applicable. The certificate holder shall maintain this documentation in the individual's file.

(14) A provider shall promptly change a child's clothing if the child has a toileting accident.

(15) If a child's clothing is wet or soiled from any body fluid, the certificate holder shall ensure that:

(a) the clothing is washed and dried; or

(b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(16) If a child uses a potty chair, the certificate holder shall ensure that it is cleaned and sanitized after each use.

(17) Except for diaper changes, which are covered in Section R430-50-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-50-16(15), the certificate holder shall ensure that the following precautions are taken when cleaning up blood, urine, feces, vomit, and breast milk.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(18) The certificate holder shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(19) The certificate holder shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(20) The certificate holder shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-50-17. Medications.

(1) Only a provider trained in the administration of medications may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) The certificate holder shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The certificate holder shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The certificate holder shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

- (a) the name of the medication;
- (b) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (c) the parent signature and the date signed.

(5) If the certificate holder keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) When administering medication, the person administering the medication shall:

- (a) wash his or her hands;
- (b) if the parent supplies the medication, check the medication label to confirm the child's name;
- (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
- (d) if the certificate holder supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;
- (e) administer the medication; and
- (f) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
 - (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.

(7) The certificate holder shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(8) The certificate holder shall not keep medications in the home for any child who is no longer enrolled.

R430-50-18. Napping.

(1) The certificate holder shall ensure that children in care are offered a daily opportunity for rest or sleep in an environment that provides a low noise level and freedom from distractions.

(2) If the certificate holder has a scheduled nap time for children, it shall not exceed two hours daily.

(3) Sleeping equipment may not block exits at any time.

R430-50-19. Child Discipline.

(1) The certificate holder shall inform non-emergency substitutes, parents, and children of the certificate holder's behavioral expectations for children.

(2) Providers and volunteers may discipline children using positive reinforcement and redirection, and by setting clear limits that promote a child's ability to become self-disciplined.

(3) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.

(4) Disciplinary measures shall not include any of the following:

- (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
- (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above;
- (c) shouting at any child;
- (d) any form of emotional abuse;
- (e) forcing or withholding of food, rest, or toileting; and,
- (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-50-20. Activities.

(1) The certificate holder shall offer daily activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The certificate holder shall ensure that the toys and equipment necessary to carry out the activities are accessible to children.

(3) If off-site activities are offered:

(a) the certificate holder shall obtain parental consent for off-site activities in advance;

(b) the certificate holder shall accompany the children and shall take a copy of each child's admission form as specified in R430-50-9(2)(a).

(c) the certificate holder shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification; and

(e) the certificate holder shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-50-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-50-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) be maintained in a safe condition and have a current vehicle registration and safety inspection;
- (d) be maintained in a clean condition; and
- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(2) The adult transporting any child in care shall:

- (a) have and carry with him or her a current valid Utah driver's license, for the type of vehicle being driven, whenever he or she is transporting any child in care;
- (b) have with him or her a copy of each child's admission form as specified in R430-50-9(2)(a);
- (c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;
- (d) ensure that each child is always attended by an adult while in the vehicle;
- (e) ensure that all children remain seated while the vehicle is in motion;
- (f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and
- (g) ensure that the vehicle is locked during transport.

R430-50-22. Animals.

(1) The certificate holder shall inform parents of the types of animals permitted on the premises.

(2) The certificate holder shall ensure that all animals on the premises and accessible to any child in care :

- (a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and
- (b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The certificate holder shall have documentation of the vaccinations.

(3) The certificate holder shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The certificate holder shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The certificate holder shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The certificate holder shall ensure that no child in care handles reptiles or amphibians while in care.

R430-50-23. Diapering.

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that

has a tightly fitting lid or is inaccessible to children.

(7) A provider shall daily clean and sanitize indoor containers where soiled diapers are placed.

(8) If cloth diapers are used:

- (a) they shall not be rinsed at the facility; and
- (b) after a diaper change, the provider shall place the cloth diaper directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or a leakproof diapering service container.

(9) The certificate holder shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-50-24. Infant and Toddler Care.

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

- (a) kept refrigerated if needed; and
- (b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

- (a) labeled with each child's name or another unique identifier; or
- (b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

- (a) has a tight fitting mattress;
- (b) has slats spaced no more than 2-3/8 inches apart;
- (c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and
- (d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach

of the child.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth; and
- (c) after being contaminated by any body fluid.

KEY: child care facilities

September 1, 2008

Notice of Continuation June 6, 2008

26-39

R430. Health, Health Systems Improvement, Child Care Licensing.**R430-90. Licensed Family Child Care.****R430-90-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in the care of licensed family providers.

R430-90-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, saliva, or breast milk.

(2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.

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

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing nonaccidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(14) "Protective cushioning" means stationary play equipment cushioning material that is approved by the American Society for Testing and Materials or the Consumer Products Safety Commission. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(15) "Protrusion hazard" means a component or piece of hardware that could impale or cut a child if the child falls against it.

(16) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.

(17) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(18) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(19) "School age" means kindergarten and older age

children.

(20) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(21) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(22) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(23) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(24) "Strangulation hazard" means something on which a child's clothes or something around a child's neck could become caught on a component of playground equipment. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(25) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.

(26) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(27) "Toddler" means a child aged 12 months but less than 24 months.

(28) "Unrelated children" means children who are not related children.

(29) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(30) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-90-3. License Required.

(1) A person must either be licensed under this rule or certified under R430-50, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-90-4. Indoor Environment.

(1) The licensee shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation

or by windows that open and have screens.

(5) The licensee shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The licensee shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor play space for each child, including providers' related children who are ages four through twelve.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(9) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-90-5. Cleaning and Maintenance.

(1) The licensee shall ensure that a clean and sanitary environment is maintained.

(2) The licensee shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The licensee shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The licensee shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-90-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of trash and animal excrement.

(7) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(8) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working power safety cover that meets ASTM Standard F1346, and the power safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(9) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(10) If a fence is required in Subsections (3), (4) or (9)(b), there shall be no gap greater than five inches in the fence, nor shall any gap between the bottom of the fence and the ground be greater than five inches.

(11) Licensees licensed prior to 1 September 2008 who do not have a fence as required by Subsections (3), (4), or (9)(b) shall have until 1 September 2011 to meet this requirement.

(12) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.

(13) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(14) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6 feet away from any structure, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under an above ground trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame.

(15) Outdoor stationary play equipment used by any child in care shall be located over grass or 6" of protective cushioning, in a 3' use zone.

(a) If sand, gravel, or shredded tires are used as protective cushioning, the licensee shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the required depth.

(b) The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.

(16) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(17) There shall be no protrusion hazard or strangulation hazard in or adjacent to the use zone of any piece of stationary play equipment.

(18) There shall be no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(19) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.

(20) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-90-7. Personnel.

(1) The licensee and all substitutes and caregivers must:

- (a) be at least 18 years of age; and
- (b) have knowledge of and comply with all applicable laws and rules.

(2) All assistant caregivers shall:

- (a) be at least 16 years of age;
- (b) work under the immediate supervision of a provider who is at least 18 years of age; and
- (c) have knowledge of and comply with all applicable laws and rules.

(3) Assistant caregivers may be included in provider to child ratios, but only if there is also another provider present in the home who is 18 years of age or older.

(4) Assistant caregivers shall meet the training and TB screening requirements of this rule.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the licensee.

(6) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid and CPR, and TB screening requirements of this rule.

(7) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the licensee may assign an emergency substitute who has not had a criminal background screening to care for the children. A licensee may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been

investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the licensee that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The licensee shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(8) Any new caregiver, volunteer, or non-emergency substitute shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

- (a) specific job responsibilities;
- (b) the licensee's written policies and procedures;
- (c) the licensee's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections R430-90-11 through 24;
- (e) introduction and orientation to the children in care;
- (f) a review of the information in the health assessment for each child in care;
- (g) procedure for releasing children to authorized individuals only;
- (h) proper clean up of body fluids;
- (i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (j) obtaining assistance in emergencies; and
- (k) if the licensee accepts infants or toddlers for care, orientation training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

(9) Substitutes who care for children an average of 10 hours per week or more, the licensee, and all caregivers shall complete a minimum of 20 hours of training each year, based on the license date. A minimum of 10 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All caregivers and non-emergency substitutes who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the relicensure date.

(c) Annual training hours shall include the following topics at least once every two years:

- (i) a review of all of the current child care licensing rules found in Sections R430-90-11 through 24;
- (ii) a review of the licensee's written policies and procedures and emergency and disaster plan, including any updates;
- (iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iv) principles of child growth and development, including development of the brain; and
- (v) positive guidance; and
- (d) if the licensee accepts infants or toddlers for care, required training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

R430-90-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the child care program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The licensee shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The licensee shall take all reasonable measures to protect the safety of each child in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the licensee or a substitute with authority to act on behalf of the licensee shall be present whenever there is a child in care.

(6) Each week, the licensee shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The licensee shall inform the parents of each child in care and the Department of any changes to the licensee's telephone number within 48 hours of the change.

(8) The licensee shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The licensee shall also mail or fax a written report to the Department within five days of the incident.

(9) The licensee shall establish, and shall ensure that all providers follow, written policies and procedures for the health and safety of each child in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of each child at all times, including when he or she is sleeping, outdoors, and during off-site activities;

(b) procedures to account for each child's attendance and whereabouts;

(c) the licensee's policy and practices regarding sick children, and whether they are allowed to be in care;

(d) recognizing early signs of illness and determining when there is a need for exclusion from care;

(e) discipline of children, including behavioral expectations of children and discipline methods used;

(f) transportation to and from off-site activities, or to and from home, if the licensee offers these services; and

(g) if the program offers transportation to or from school, policies addressing:

(i) how long a child will be unattended by a provider before school starts and after school lets out;

(ii) what steps will be taken if a child fails to meet the vehicle; and

(iii) how and when parents will be notified of delays or problems with transportation to and from school.

(10) The licensee shall ensure that the written policies and procedures are available for review by parents and the Department during business hours.

(11) The licensee shall train and supervise all caregivers and substitutes to:

(a) ensure their compliance with this rule;

(b) ensure they meet the needs of the children in care as specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-90-9. Records.

(1) The licensee shall maintain on-site for review by the Department during any inspection the following general records:

(a) documentation of the previous 12 months of quarterly fire drills and annual disaster drills as specified in R430-90-10(9) and R430-90-10(11);

(b) current animal vaccination records as required in

R430-90-22(2)(b);

(c) a six week record of child attendance, including sign-in and sign-out records, as required in R430-90-13(3);

(d) all current variances granted by the Department;

(e) a current local health department kitchen inspection;

(f) an initial local fire department clearance for all areas of the home being used for care;

(g) approved initial "CBS/MIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and each person age 12 and older who resides in the licensee's home;

(h) if the licensee has been licensed for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal; and

(i) if the licensee has been licensed for more than a year, the most recent "Request for Annual Renewal of CBS/MIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal.

(2) The licensee shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) date of enrollment;

(iv) the parent's name, address, and phone number, including a daytime phone number;

(v) the names of people authorized by the parent to pick up the child;

(vi) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vii) child health information, as required in R430-90-14(6); and

(viii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-90-14(4) and (5);

(c) a completed transportation permission form, if transportation services are offered to any child in care;

(d) a six week record of medication permission forms, and a six week record of medications actually administered as specified in R430-90-17(4) and R430-90-17(6)(f), if medications are administered to any child in care; and

(e) a six week record of incident, accident, and injury reports.

(3) The licensee shall maintain on-site for review by the Department during any inspection the following records for the licensee and each non-emergency substitute and caregiver:

(a) results of an initial TB screening, as required in R430-90-16(11) and (12);

(b) orientation training documentation for all non-emergency substitutes and caregivers as required in R430-90-7(8);

(c) annual training documentation for the past two years, for the licensee and all non-emergency substitutes and caregivers, as required in R430-90-7(9)(a); and

(d) current first aid and CPR certification, as required in R430-90-10(2), R430-90-20(3)(d), and R430-90-21(2).

(4) The licensee shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-90-7(8).

(5) The licensee shall ensure that information in any child's file is not released without written parental permission.

R430-90-10. Emergency Preparedness.

- (1) The licensee shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.
- (2) The licensee and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.
- (3) The licensee shall maintain first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.
- (4) The licensee shall have a written emergency and disaster plan which shall include at least the following:
 - (a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;
 - (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;
 - (c) the location of and procedure for emergency shut off of gas, electricity, and water;
 - (d) procedures to be followed if a child is missing;
 - (e) the name and phone number of a substitute to be called in the event the licensee must leave the home for any reason;
 - (f) an emergency relocation site where children will be housed if the licensee's home is uninhabitable;
 - (g) provisions for emergency supplies, including at least food, water, a first aid kit, and diapers if the licensee accepts diapered children for care; and
 - (h) procedures for ensuring adequate supervision of children during emergency situations, including while at the emergency relocation site.
- (5) The licensee shall ensure that the emergency and disaster plan is followed in the event of an emergency.
- (6) The licensee shall review the emergency and disaster plan annually, and update it as needed. The licensee shall note the date of reviews and updates to the plan on the plan.
- (7) The emergency and disaster plan shall be available for immediate review by parents and the Department during business hours.
- (8) The licensee shall conduct fire evacuation drills quarterly. Drills shall include complete exit of all children and staff from the home.
- (9) The licensee shall document all fire drills, including:
 - (a) the date and time of the drill;
 - (b) the number of children participating;
 - (c) the total time to complete the evacuation; and
 - (d) any problems encountered.
- (10) The licensee shall conduct drills for disasters other than fires at least once every 12 months.
- (11) The licensee shall document all disaster drills, including:
 - (a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;
 - (b) the date and time of the drill;
 - (c) the number of children participating;
 - (d) the total time to complete the evacuation; and
 - (e) any problems encountered.
- (12) The licensee shall vary the days and times on which fire and other disaster drills are held.

R430-90-11. Supervision and Ratios.

- (1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:
 - (a) awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
 - (b) monitoring of each sleeping infant in one of the following ways:
 - (i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

- (ii) by in person observation of each sleeping infant at least once every 15 minutes; or
- (iii) by using a Department-approved infant sleep monitoring device.
- (2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:
 - (a) a provider can hear the children playing outdoors; and
 - (b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.
- (3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:
 - (a) the licensee has prior written permission from the child's parent for the child's participation; and
 - (b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.
- (4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.
- (5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.
 - (a) Children in care include the providers' own children under the age of four.
 - (b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.
- (6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.
- (7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).
- (8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

TABLE 1
MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-4	8 children	12
5	7 children	12
6	6 children	12
7	5 children	12
8	4 children	12
9	3 children	12
10	2 children	12
11	1 child	12

TABLE 2
MAXIMUM GROUP SIZE WITH 2 PROVIDERS

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-8	16 children	24
9	15 children	24
10	14 children	24
11	13 children	24
12	12 children	24
13	11 children	24
14	10 children	24

15	9 children	24
16	8 children	24
17	7 children	24
18	6 children	24
19	5 children	24
20	4 children	24
21	3 children	24
22	2 children	24
23	1 child	24

R430-90-12. Injury Prevention.

(1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The licensee shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a locked cabinet or area, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes and cords long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

R430-90-13. Parent Notification and Child Security.

(1) The licensee shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the licensee's home and outdoor area that are used for child care.

(3) The licensee shall ensure that either a provider or the parent signs each child in and out daily, including the date and the time the child arrives and leaves and when the child goes to and returns from school, and the signature or initials of the person signing the child in and out.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can

confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The licensee shall ensure that parents are given a written report of every serious incident, accident, or injury involving their child on the day of occurrence. A provider and the person picking up the child shall sign the report to acknowledge that he or she has received it.

(6) The licensee shall ensure that parents are notified verbally of minor accidents and injuries on the day of occurrence.

(7) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(8) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

R430-90-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) The licensee shall not enroll any child for care without documentation of:

(a) proof of current immunizations as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The licensee shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The licensee shall not admit any child for care without the following written health information from the parent:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and

(f) any other special health instructions for the licensee.

(7) The licensee shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-90-15. Child Nutrition.

(1) If food service is provided:

(a) The licensee shall ensure that his or her meal service complies with local health department food service regulations.

(b) Foods served by license holders not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, current menus provided by the CACFP, or menus approved by a registered

dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) License holders not currently participating and in good standing with the CACFP shall keep a one week record of foods served at each meal or snack.

(d) The current week's menu shall be available for parent review.

(2) The licensee shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. Providers shall not place food on a bare table.

(4) The licensee shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed.

R430-90-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;
- (c) after diapering each child;
- (d) after using the toilet or helping a child use the toilet;
- (e) after coming into contact with any body fluid, including breast milk;
- (f) after playing with or handling animals;
- (g) when coming in from outdoors; and
- (h) before administering medication.

(2) The licensee shall ensure that each child washes his or her hands with soap and running water at the following times:

- (a) before and after eating meals and snacks;
 - (b) after using the toilet;
 - (c) after coming into contact with any body fluid;
 - (d) after playing with animals; and
 - (e) when coming in from outdoors.
- (3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands. If cloth towels are used, they shall not be shared by children, providers, or volunteers, and a provider shall wash the towels daily.

(5) The licensee shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(6) The licensee shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(8) The licensee shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The licensee shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(10) If a water play table or tub is used, the licensee shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(11) All providers who provide care an average of 10 hours or more each week shall be tested for tuberculosis (TB) using a testing method and follow-up that is acceptable to the Department. Testing shall take place prior to licensure, and for each substitute or caregiver within two weeks of assuming duties.

(12) If the TB test is positive, the person shall provide documentation from a health care provider detailing:

- (a) the reason for the positive reaction;
- (b) whether the person is contagious; and
- (c) if needed, how the person is being treated.

(13) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(14) An individual having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating the individual is exempt from testing, with an associated time frame if applicable. The licensee shall maintain this documentation in the individual's file.

(15) A provider shall promptly change a child's clothing if the child has a toileting accident.

(16) If a child's clothing is wet or soiled from any body fluid, the licensee shall ensure that:

- (a) the clothing is washed and dried; or
- (b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(17) If a child uses a potty chair, the licensee shall ensure that it is cleaned and sanitized after each use.

(18) Except for diaper changes, which are covered in Section R430-90-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-90-16(16), the licensee shall ensure that the following precautions are taken when cleaning up blood, urine, feces, vomit, and breast milk.

- (a) The person cleaning up the substance shall wear waterproof gloves;
- (b) the surface shall be cleaned using a detergent solution;
- (c) the surface shall be rinsed with clean water;
- (d) the surface shall be sanitized;
- (e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;
- (f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and
- (g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(19) The licensee shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(20) The licensee shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(21) The licensee shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-90-17. Medications.

(1) Only a provider trained in the administration of medications may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) The licensee shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to

children. The licensee shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The licensee shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

- (a) the name of the medication;
- (b) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (c) the parent's signature and the date signed.

(5) If the licensee keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) When administering medication, the person administering the medication shall:

- (a) wash his or her hands;
- (b) if the parent supplies the medication, check the medication label to confirm the child's name;
- (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
- (d) if the licensee supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;
- (e) administer the medication; and
- (f) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
 - (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.

(7) The licensee shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(8) The licensee shall not keep medications in the home for any child who is no longer enrolled.

R430-90-18. Napping.

(1) The licensee shall ensure that children in care are offered a daily opportunity for rest or sleep in an environment that provides a low noise level and freedom from distractions.

(2) If the licensee has a scheduled nap time for children, it shall not exceed two hours daily.

(3) If a child uses sleeping equipment, sleeping bags, a pillow, a pillow case, sheets, or blankets while in care, the licensee shall meet the following requirements:

(a) The licensee shall maintain sleeping equipment in good repair.

(b) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are clearly assigned to and used by an individual child, a provider must clean and sanitize them as needed, but at least weekly.

(c) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are not clearly assigned to and used by an individual child, a provider must clean and sanitize them prior

to each use.

(4) If a child uses a pillow without a pillow case while in care, then the provider must clean and sanitize the pillow as required in Subsection (3). If a child uses a pillow with a pillow case while in care, then the provider must clean and sanitize the pillow case as required in Subsection (3).

(5) Sleeping equipment may not block exits at any time.

R430-90-19. Child Discipline.

(1) The licensee shall inform non-emergency substitutes, caregivers, parents, and children of the licensee's behavioral expectations for children.

(2) Providers and volunteers may discipline children using positive reinforcement and redirection, and by setting clear limits that promote a child's ability to become self-disciplined.

(3) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.

(4) Disciplinary measures shall not include any of the following:

- (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
- (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above;
- (c) shouting at any child;
- (d) any form of emotional abuse;
- (e) forcing or withholding of food, rest, or toileting; and,
- (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-90-20. Activities.

(1) The licensee shall develop a daily activity plan that offers activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The licensee shall ensure that the toys and equipment needed to carry out the activity plan are accessible to children.

(3) If off-site activities are offered:

- (a) the licensee shall obtain parental consent for off-site activities in advance;
- (b) the licensee shall accompany the children and shall take a copy of each child's admission form as specified in Subsection R430-90-9(2)(a).

(c) the licensee shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification; and

(e) the licensee shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-90-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-90-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) be maintained in a safe condition and have a current vehicle registration and safety inspection;

- (d) be maintained in a clean condition;
 - (e) maintain temperatures between 60-90 degrees Fahrenheit when in use; and
 - (f) contain first aid supplies, including at least antiseptic, band-aids, and tweezers.
- (2) At least one adult in each vehicle transporting any child in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.
- (3) The adult transporting any child in care shall:
- (a) have and carry with him or her a current valid Utah driver's license for the type of vehicle being driven whenever he or she is transporting any child in care;
 - (b) have with him or her a copy of each child's admission form as specified in Subsection R430-90-9(2)(a);
 - (c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;
 - (d) ensure that each child is always attended by an adult while in the vehicle;
 - (e) ensure that all children remain seated while the vehicle is in motion;
 - (f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,
 - (g) ensure that the vehicle is locked during transport.

R430-90-22. Animals.

- (1) The licensee shall inform parents of the types of animals permitted on the premises.
- (2) The licensee shall ensure that all animals on the premises and accessible to any child in care :
- (a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and
 - (b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The licensee shall have documentation of the vaccinations.
- (3) The licensee shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.
- (4) The licensee shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.
- (5) The licensee shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.
- (6) The licensee shall ensure that no child in care handles reptiles or amphibians while in care.

R430-90-23. Diapering.

If children in care are diapered on the premises, the following applies:

- (1) The diapering area shall not be located in a food preparation or eating area.
- (2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.
- (3) The diapering surface shall be smooth, waterproof, and in good repair.
- (4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.
- (5) The provider shall wash his or her hands after each diaper change.
- (6) The provider shall place soiled disposable diapers in a container that has a disposable plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.
- (7) A provider shall daily clean and sanitize indoor containers where soiled diapers are placed.

- (8) If cloth diapers are used:
 - (a) they shall not be rinsed at the facility; and
 - (b) after a diaper change, the provider shall place the cloth diaper directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or a leakproof diapering service container.
- (9) The licensee shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-90-24. Infant and Toddler Care.

If the licensee accepts infants or toddlers for care, the following applies:

- (1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.
- (2) A provider shall clean and sanitize high chair trays prior to each use.
- (3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.
- (4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.
- (5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:
 - (a) kept refrigerated if needed; and
 - (b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.
- (6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.
- (7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.
- (8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:
 - (a) labeled with each child's name or another unique identifier; or
 - (b) washed and sanitized after each individual use, before use by another child.
- (9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.
- (10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.
- (11) The licensee shall ensure that each crib used by a child in care:
 - (a) has a tight fitting mattress;
 - (b) has slats spaced no more than 2-3/8 inches apart;
 - (c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and
 - (d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.
- (12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation

from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth; and
- (c) after being contaminated by any body fluid.

KEY: child care facilities

September 1, 2008

Notice of Continuation June 6, 2008

26-39

R477. Human Resource Management, Administration.**R477-14. Substance Abuse and Drug-Free Workplace.****R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees in non highly sensitive positions are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty;
- (e) follow up.

(7) For employees in non highly sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures.

(8) For employees in non highly sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.

(9) Employees who hold highly sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a highly sensitive position, and final applicants for highly sensitive positions are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty;
- (e) follow up;
- (f) preemployment;
- (g) random.

(10) For employees in highly sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49 CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (2002), Other Alcohol Related Conduct.

(11) Employees in highly sensitive positions, as approved

by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(12) Employees in highly sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing highly sensitive functions, must be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(13) Employees in highly sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing highly sensitive duties, may be subject to corrective action or discipline.

(14) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(16) The agency human resource field office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00;

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at his expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Title 63, Chapter 2.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Rule Distribution.

The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

August 21, 2008

Notice of Continuation December 6, 2006

67-19-6

67-19-18

67-19-34

63-19-37

67-19-38

R495. Human Services, Administration.**R495-876. Provider Code of Conduct.****R495-876-1. Authority.**

The Department of Human Services promulgates this rule pursuant to the rulemaking authority granted in Section 62A-1-111.

R495-876-2. Statement of Purpose.

(1) The Department of Human Services ("DHS") adopts this Code of Conduct to:

(a) Protect its clients from abuse, neglect, maltreatment and exploitation; and

(b) Clarify the expectation of conduct for DHS Providers and their employees and volunteers who interact in any way with DHS clients, DHS staff and the public.

(2) The Provider shall distribute a copy of this Code of Conduct to each employee and volunteer, regardless of whether the employees or volunteers provide direct care to clients, indirect care, administrative services or support services. The Provider shall require each employee and volunteer to read the Code of Conduct and sign a copy of the attached "Certification of Understanding" before having any contact with DHS clients. The Provider shall file a copy of the signed Certificate of Understanding in each employee and volunteer's personnel file. The Provider shall also maintain a written policy that adequately addresses the appropriate treatment of clients and that prohibits the abuse, neglect, maltreatment or exploitation of clients. This policy shall also require the Provider's employees and volunteers to deal with DHS staff and the public with courtesy and professionalism.

(3) This Code of Conduct supplements various statutes, policies and rules that govern the delivery of services to DHS clients. The Providers and the DHS Divisions or Offices may not adopt or enforce policies that are less-stringent than this Code of Conduct unless those policies have first been approved in writing by the Office of Licensing and the Executive Director of the Utah Department of Human Services. Nothing in this Code of Conduct shall be interpreted to mean that clients are not accountable for their own misbehavior or inappropriate behavior, or that Providers are restricted from imposing appropriate sanctions for such behavior.

R495-876-3. Abuse, Neglect, Exploitation, and Maltreatment Prohibited.

Providers shall not abuse, neglect, exploit or maltreat clients in any way, whether through acts or omissions or by encouraging others to act or by failing to deter others from acting.

R495-876-4. General Definitions.

(1) "Client" means anyone who receives services from DHS or from a Provider pursuant to an agreement with DHS or funding from DHS.

(2) "DHS" means the Utah Department of Human Services or any of its divisions, offices or agencies.

(3) "Domestic-violence-related child abuse" means any domestic violence or a violent physical or verbal interaction between cohabitants in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence.

(4) "Emotional maltreatment" means conduct that subjects the client to psychologically destructive behavior, and includes conduct such as making demeaning comments, threatening harm, terrorizing the client or engaging in a systematic process of alienating the client.

(5) "Provider" means any individual or business entity that contracts with DHS or with a DHS contractor to provide services to DHS clients. The term "Provider" also includes licensed or certified individuals who provide services to DHS

clients under the supervision or direction of a Provider. Where this Code of Conduct states (as in Sections III-VII) that the "Provider" shall comply with certain requirements and not engage in various forms of abuse, neglect, exploitation or maltreatment, the term "Provider" also refers to the Provider's employees, volunteers and subcontractors, and others who act on the Provider's behalf or under the Provider's control or supervision.

(6) "Restraint" means the use of physical force or a mechanical device to restrict an individual's freedom of movement or an individual's normal access to his or her body. "Restraint" also includes the use of a drug that is not standard treatment for the individual and that is used to control the individual's behavior or to restrict the individual's freedom of movement.

(7) "Seclusion" means the involuntary confinement of the individual in a room or an area where the individual is physically prevented from leaving.

(8) "Written agency policy" means written policy established by the Provider. If a written agency policy contains provisions that are more lenient than the provisions of this Code of Conduct, those provisions must be approved in writing by the DHS Executive Director and the Office of Licensing.

R495-876-5. Definitions of Prohibited Abuse, Neglect, Exploitation, and Maltreatment.

(1) "Abuse" includes, but is not limited to:

(a) Harm or threatened harm, to the physical or emotional health and welfare of a client.

(b) Unlawful confinement.

(c) Deprivation of life-sustaining treatment.

(d) Physical injury, such as contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

(e) Any type of unlawful hitting or corporal punishment.

(f) Domestic-violence-related child abuse.

(g) Any Sexual abuse and sexual exploitation including but not be limited to:

(i) Engaging in sexual intercourse with any client.

(ii) Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

(iii) Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

(iv) Engaging a client as an observer or participation in sexual acts.

(v) Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

(vi) Committing or attempting to commit acts of sodomy or molestation with a client.

(2) "Neglect" includes but is not limited to:

(a) Denial of sufficient nutrition.

(b) Denial of sufficient sleep.

(c) Denial of sufficient clothing, or bedding.

(d) Failure to provide adequate client supervision; including situations where the Provider's employee or volunteer is a sleep or ill on the job, or is impaired due to the use of alcohol or drugs.

(e) Failure to provide care and treatment as prescribed by the client's services, program or treatment plan, including the failure to arrange for medical or dental care or treatment as

prescribed or as instructed by the client's physician or dentist, unless the client or the Provider obtains a second opinion from another physician or dentist, indicating that the originally-prescribed medical or dental care or treatment is unnecessary.

(f) Denial of sufficient shelter, where shelter is part of the services the Provider is responsible for providing to the client.

(g) Educational neglect (i.e. willful failure or refusal to make a good faith effort to ensure that a child in the Provider's care or custody receives an appropriate education).

(3) "Exploitation" will include but is not limited to:

(a) Using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another.

(b) Making unjust or improper use of clients or their resources.

(c) Accepting gifts in exchange for preferential treatment of a client or in exchange for services that the Provider is already obliged to provide to the client.

(d) Using the labor of a client for personal gain.

(e) Using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by DHS policy or the Provider's contract with DHS.

(i) Examples:

(A) It is not "exploitation" for a foster parent to assign an extra chore to a foster child who has broken a household rule, because the extra chore is reasonable discipline and teaches the child to obey the household rules.

(B) It is not "exploitation" to require clients to help serve a meal at a senior center where they receive free meals and are encouraged to socialize with other clients. The meal is a non-monetary compensation, and the interaction with other clients may serve the clients' therapeutic needs.

(C) It is usually "exploitation" to require a client to provide extensive janitorial or household services without pay, unless the services are actually an integral part of the therapeutic program, such as in "clubhouse" type programs that have been approved by DHS.

(4) "Maltreatment" includes but is not limited to:

(a) Physical exercises, such as running laps or performing pushups, except where such exercises are consistent with an individual's service plan and written agency policy and with the individual's health and abilities.

(b) Any form of Restraint or Seclusion used by the Provider for reasons of convenience or to coerce, discipline or retaliate against a client. The Provider may use a Restraint or Seclusion only in emergency situations where such use is necessary to ensure the safety of the client or others and where less restrictive interventions would be ineffective, and only if the use is authorized by the client's service plan and administered by trained authorized personnel. Any use of Restraint or Seclusion must end immediately once the emergency safety situation is resolved. The Provider shall comply with all applicable laws about Restraints or Seclusions, including all federal and state statutes, regulations, rules and policies.

(c) Assignment of unduly physically strenuous or harsh work.

(d) Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements as a means of punishment.

(e) Group punishments for misbehaviors of individuals.

(f) Emotional maltreatment, bullying, teasing, provoking or otherwise verbally or physically intimidating or agitating a client.

(g) Denial of any essential program service solely for disciplinary purposes.

(h) Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes.

(i) Requiring the individual to remain silent for long periods of time for the purpose of punishment.

(j) Extensive withholding of emotional response or stimulation.

(k) Denying a current client from entering the client's residence, where such denial is for disciplinary or retaliatory purposes or for any purpose unrelated to the safety of clients or others.

R495-876-6. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.

In addition to complying with this Code of Conduct, the Provider shall comply with all applicable laws (such as statutes, rules and court decisions) and all policies adopted by the DHS Office of Licensing, by the DHS Divisions or Offices whose clients the Provider serves, and by other state and federal agencies that regulate or oversee the Provider's programs. Where the Office of Licensing or another DHS entity has adopted a policy that is more specific or restrictive than this Code of Conduct, that policy shall control. If a statute, rule or policy defines abuse, neglect, exploitation or maltreatment as including conduct that is not expressly included in this Code of Conduct, such conduct shall also constitute a violation of this Code of Conduct. See, e.g., Title 62A, Chapter 3 of the Utah Code (definition of adult abuse) and Title 78A, Chapter 6 and Title 76, Chapter 5 of the Utah Code (definitions of child abuse).

R495-876-7. The Provider's Interactions with DHS Personnel and the Public.

In carrying out all DHS-related business, the Provider shall conduct itself with professionalism and shall treat DHS personnel, the members of the Provider's staff and members of the public courteously and fairly. The Provider shall not engage in criminal conduct or in any fraud or other financial misconduct.

R495-876-8. Sanctions for Non-compliance.

If a Provider or its employee or volunteer fail to comply with this Code of Conduct, DHS may impose appropriate sanctions (such as corrective action, probation, suspension, disbarment from State contracts, and termination of the Provider's license or certification) and may avail itself of all legal and equitable remedies (such as money damages and termination of the Provider's contract). In imposing such sanctions and remedies, DHS shall comply with the Utah Administrative Procedures Act and applicable DHS rules. In appropriate circumstances, DHS shall also report the Provider's misconduct to law enforcement and to the Provider's clients and their families or legal representatives (e.g., a legal guardian). In all cases, DHS shall also report the Provider's misconduct to the licensing authorities, including the DHS Office of Licensing.

R495-876-9. Providers' Duty to Help DHS Protect Clients.

(1) Duty to Protect Clients' Health and Safety. If the Provider becomes aware that a client has been subjected to any abuse, neglect, exploitation or maltreatment, the Provider's first duty is to protect the client's health and safety.

(2) Duty to Report Problems and Cooperate with Investigations. Providers shall document and report any abuse, neglect, exploitation or maltreatment and exploitation as outlined in this Code of Conduct, and they shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies.

(a) Except as provided in subsection(b) below, Providers shall immediately report abuse, neglect, exploitation or maltreatment by contacting the local Regional Office of the

appropriate DHS Division or Office. During weekends and on holidays, Providers shall make such reports to the on-call worker of that Regional Office.

(i) Providers shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

(ii) The Provider shall make all reports and documentation about abuse, neglect, exploitation, and maltreatment available to appropriate DHS personnel and law enforcement upon request.

(b) Providers shall document any client injury (explained or unexplained) that occurs on the Providers' premises or while the client is under the Provider's care and supervision, and the Provider shall report any such injury to supervisory personnel immediately. Providers shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies. If the client's injury is extremely minimal, the Provider has 12 hours to report the injury. The term "extremely minimal" refers to injuries that obviously do not require medical attention (beyond washing a minor wound and applying a band-aid, for example) and which cannot reasonably be expected to benefit from advice or consultation from the supervisory personnel or medical practitioners.

(i) Example: If a foster child falls off a swing and skins her knee slightly, the foster parent shall document the injury and report to the foster care worker within 12 hours.

(ii) Example: If a foster child falls off a swing and sprains or twists her ankle, the foster parent shall document the injury and report it immediately to supervisory personnel because the supervisor may want the child's ankle X-rayed or examined by a physician.

(3) Duty to Report Fatalities and Cooperate in Investigations and Fatality Reviews. If a DHS client dies while receiving services from the Provider, the Provider shall notify the supervising DHS Division or Office immediately and shall cooperate with any investigation into the client's death. In addition, some Providers are subject to the Department of Human Services' Fatality Review Policy. (See the "Eligibility" section of DHS Policy No. 05-02 for a description of the entities subject to the fatality review requirements. A copy of the policy is available at the DHS web site at: <http://www.hspolicy.utah.gov>) If the Provider is subject to the Fatality Review Policy, it shall comply with that policy (including all reporting requirements) and the Provider shall cooperate fully with any fatality reviews and investigations concerning a client death.

(4) Duty to Display DHS Poster. The Provider shall prominently display in each facility a DHS poster that notifies employees of their responsibilities to report violations of this Provider Code of Conduct, and that gives phone numbers for the Regional Office or Intake Office of the relevant DHS Division(s). Notwithstanding the foregoing, if the Provider provides its services in a private home and if the Provider has fewer than three employees or volunteers, the Provider shall maintain this information in a readily-accessible place but it need not actually display the DHS poster. DHS shall annually provide the Provider with a copy of the current DHS poster or it shall make the poster available on the DHS web site: http://www.hspolicy.utah.gov/pdf/poster_provider_code_of_conduct.pdf.

KEY: social services, provider conduct*

August 26, 2008

Notice of Continuation August 22, 2006

62A-1-110

62A-1-111

R512. Human Services, Child and Family Services.**R512-100. Home Based Services.****R512-100-1. Authority and Purpose.**

A. The purpose of Home Based Services is to provide services to allow children at risk to remain safely in their own home, and provide services to facilitate the return home of children who have been placed in the custody of the Division (DCFS).

B. The components of Home Based Intervention include:

1. Case Management,
2. Skills Development and Family Education,
3. Counseling/Therapy,
4. Home visits: The DCFS worker will visit with the child and family a minimum of one time per month.

5. Private conversation with one or more of the child(ren) if the child(ren) has(have) been substantiated as a victim of abuse or neglect.

C. Pursuant to Section 62A-4a-105 the Division is authorized to provide Home Based Services.

R512-100-2. Definitions.

A. Child and Family Plan is based on the assessment of the child and family's strengths and needs which will enable them to work toward their goals.

B. Child and Family Team: A group that meets together as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.

C. Functional Assessment defines the child and family's strengths and needs and provides the framework from which to access appropriate services. Evaluate progress toward goals and adjust plans and interventions accordingly.

R512-100-3. Qualification.

A. Home Based services may be provided to children who are potentially at risk of abuse and neglect and their families. The family must agree to work voluntarily with Child and Family Services with regard to Early Intervention services.

B. Requests for Home Based Services will be evaluated as soon as possible after receiving the request. The initial level of intensity will be decided also and is assigned at the discretion of DCFS. Acceptance may be based on any of the following criteria:

1. the ongoing risk of abuse/neglect of a child,
2. the minimal or no risk of removal of the child from his/her home,
3. the past history of abuse/neglect of a child,
4. the family's willingness to accept Home Based Services,
5. the need for ongoing monitoring by DCFS.

C. DCFS will have the discretion to determine whether a request for Home Based DCFS Services is accepted unless those services are court-ordered. Home Based Services are appropriate when any of the following conditions exist:

1. a child has experienced abuse or neglect but can remain safely in the home;
2. when a child is returned home from out of home care;
3. when an adoptive placement may disrupt or dissolve and intensive services are needed to maintain the family in the adoptive home; or
4. when reunification is likely within 14 days and intensive support is needed to prepare for and facilitate the reunification.

D. A child and family will not be accepted for Home Based Services if all of the following conditions are present:

1. a family has the ability to access resources, supports and services on their own,
2. there is minimal risk or no of abuse/neglect to the child; and the family does not require ongoing services.

E. The family will be asked to sign a consent for services

after the case is opened by a DCFS worker and prior to the time services begin.

F. If the DCFS response to a request is that the family needs Home Based Services but the family refuses to accept these services and the child is determined to be at risk of abuse/neglect, by the evidence from the initial assessment, safety/risk assessments or by observation by the Home Based Worker, the DCFS worker will screen the case with an Assistant Attorney General and will consider filing a petition for court-ordered services.

G. The family and the referent will be contacted and informed of the decision to provide or not to provide Home Based Services. Notification may be verbal or written and will be documented in the file.

H. If a request for Home Based Services is denied, the reasons for denial of Home Based Services will be documented and explained to the referent and family. The worker will provide suggestions to the family for other resources, supports and services to meet the family's needs. Referral resources will also be recorded in the closing summary.

R512-100-5. Service Delivery.

A. A Child and Family Team will be developed or strengthened for every family receiving Home Based Services.

B. Ongoing Child and Family Team meetings will be held for every family receiving Home Based Services to ensure safety of the child and appropriateness and quality of services provided to the family. Child and Family Team Meetings must be held at least once every six months to track and adapt the plan.

C. Ongoing Child and Family Team Meetings for Home Based services will include, but are not limited to, the following:

1. Initial Child and Family Team Meeting which will be held for each Home Based Services case to establish case intensity and to discuss options for service provision.

2. Transition Child and Family Team Meeting may be held prior to the family's transition from services with the following goals:

- a. assess safety of and ongoing risk to the child;
- b. identify continuing and additional service needs ; and
- c. assess the family's ability to meet their own needs and access services without further DCFS involvement.

D. A functional assessment will be updated as new information is obtained for each child and family receiving Home Based Services, and prior to the development of the Child and Family Plan.

E. A Child and Family Plan will be developed for each family receiving Home Based Services. The plan will be developed by the Child and Family Team and will have the goal of identifying avenues through which the family can establish and meet their needs.

F. Child and Family plans will be reviewed at a minimum every three months and updated as needed. The worker will request information from Child and Family Team members when reviewing, tracking and adapting the Child and Family Plan.

G. The child and family plan will be complete when the worker, their supervisor and the child and family team have agreed to the plan and it is finalized in SAFE. Signatures will be obtained as soon as possible after the plan is finalized in SAFE. If a family member refuses to sign the plan, the worker will document that family member's reasons for refusal.

H. The worker will provide a copy of the Child and Family Plan to the family, other Child and Family Team members and, if services are court ordered, to the attorney general, guardian ad litem and the court.

I. When Home Based Services are court ordered, it is the responsibility of DCFS to determine the level of intensity of the services to be provided to the family unless a court order

specifically sets a level of intensity.

J. If services are court ordered but the assessment indicates that Home Based Services are not appropriate, the DCFS worker will contact the assistant attorney general and guardian ad litem, explain the situation and request a petition be filed with the court to terminate services.

K. The family and referent must be informed of the results of a functional assessment when the Home Based worker has concluded that Home Based Services are inappropriate and is recommending that those services should be terminated. If needs have been identified that could not be met by other means then other service options should be explored with the family prior to ending services with the family.

L. When determining the level of service intensity, the DCFS worker will consider the following factors:

1. The degree of risk to the child;
2. the extent of services to be provided;
3. The needed frequency and duration of contacts with the family;
4. The amount of time needed for case management activities;
5. If a clinical service is needed; and
6. The family's schedule.

M. The intensity of service may change during the course of Home Based Services. A change in intensity level does not require termination of service or starting a new service and does not require a worker change.

N. The needs of the child and family and the intensity of the service will determine the frequency of home visits to the child and family. The worker, or another member of the team will contact the child/family at a minimum, once monthly. Contact may include a Home or Community Visit. If a team member other than the identified DCFS targeted case manager contacts the family, they will report the nature and outcome of the visit to the case manager.

O. Unannounced visits are permissible and the likelihood of such visits should be explained to the family.

R512-100-6. Duration of Services.

A. Early intervention services may last for 30 to 90 days, or, if determined by the worker, supervisor and the child and family team to be necessary, may be extended as long as the family needs to reduce risks and develop or strengthen a support system separate from Child and Family Services.

B. Intensive services will be provided for a period of 60 to 90 days. If intensive services beyond the 60 to 90 days are in the best interest of the child and family, the supervisor or designee may approve an extension. The reasons for the extension must be documented and include specific desired results and treatment methods.

R512-100-7. Termination of Services.

A. If the initial functional assessment indicates that Home Based Services are not appropriate, services may be terminated (unless court ordered) without development of a Child and Family Plan. Termination will occur prior to the due date of the Child and Family Plan.

B. When it is determined that services will no longer be provided, a final progress summary will be completed, including the reason for closure.

C. If there are two DCFS workers assigned to the case, the workers will collaborate prior to making a decision to remove the child from the home, unless the removal is due to an emergency.

D. If a child needs to be removed from the home in which the child's family is receiving Home Based Services, the Home Based Services worker will follow the requirement specified in Rule R512-200, obtaining a warrant, motion hearing, or if appropriate circumstances exist, will remove without a warrant.

E. A consultation is required prior to the removal of the child and will include the Home Based Services supervisor, a DCFS Child Protective Services (CPS) supervisor or a CPS worker. The Home Based worker should also consult with the guardian ad litem and assistant attorney general.

R512-100-8. Documentation.

A. If Domestic Violence (DV) is identified through the provision of the service where it wasn't before, the worker will document the completion of the following:

1. staff with supervisor and/or DV specialist/or community specialist; and
2. conduct assessment alone with the victim or see that a domestic violence or
3. community specialist conducts an assessment.
4. complete Risk of Danger form;
5. create Safety Plan; and
6. interview child and assess.

KEY: child welfare

September 3, 2003

Notice of Continuation August 20, 2008

62A-4a-105

R512. Human Services, Child and Family Services.
R512-200. Child Protective Services, Intake Services.
R512-200-1. Authority and Purpose.

- A. The purpose of Intake Services is:
1. to receive and evaluate whether an investigation is needed;
 2. assign for investigation, referrals of suspected child abuse, neglect, and dependency.
- B. Pursuant to Section 62A-4a-105 and 62A-4a-403, the Division of Child and Family Services (DCFS) is authorized to provide child protective services.

R512-200-2. Definitions.

- A. The following terms are defined for the purposes of this rule:
1. SAFE: DCFS' Child Welfare Management Information System.

R512-200-3. Scope of Services.

- A. Qualification for Services.
1. DCFS will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply DCFS Child Protective Services (CPS) workers with a complete previous Division history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.
 - B. Priority of the referral.
 1. The Division establishes CPS priority time frames as follows:
 - a. A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the DCFS CPS worker. Intake shall provide the DCFS CPS worker with information concerning prior investigations on SAFE. The DCFS CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a DCFS CPS worker has, as a standard, three hours to initiate efforts to make face to face contact if the alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.
 - b. A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the DCFS CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned DCFS CPS worker. Intake shall also provide the DCFS CPS worker with information concerning prior investigations on SAFE. The DCFS CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.
 - c. A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a CPS Intake worker will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS,

and notify law enforcement. Intake shall also provide the DCFS CPS worker with information concerning prior investigations on SAFE. The DCFS CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.

d. A Priority 4 response shall be assigned when one or more of the following apply and there are no safety or protection issues identified:

1. A juvenile court or district court orders an investigation where there are no specific allegations of abuse, neglect, or dependency (unless otherwise ordered by the court).
2. There is an alleged out-of-home perpetrator (an alleged perpetrator who does not reside with or have access to the child) and there is no danger that critical evidence will be lost.
3. An agency outside the state of Utah requests a courtesy investigation, and the circumstances in the case do not meet the definition of a priority 1, 1R, 2, or 3.

C. Out-of-State Abuse or Neglect Report.

1. DCFS will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.
2. When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the time of the referral, the DCFS CPS worker shall:
 - a. Obtain all the information needed to complete a referral.
 - b. Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.
 - c. Contact the child protective service agency in the state where the incident of abuse occurred and complete the referral process of that state.
 - d. Assign the referral to a DCFS CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.
 - e. In domestic violence related child abuse cases, recognize another state's protective order.
 - f. If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a DCFS CPS worker for investigation. The DCFS CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.
- D. When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:
 1. Obtain all the information needed to complete a referral.
 2. Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.
 3. If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.
- E. The Department of Health Child Care Licensing unit and/or the DHS Office of Licensing and appropriate DCFS staff shall be notified by Intake when DCFS receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the contracted entity for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of DCFS, or any other DCFS conflict of interest.
- F. Availability.
 1. CPS Services are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

September 3, 2003
Notice of Continuation August 20, 2008

62A-4a-105

R512. Human Services, Child and Family Services.**R512-201. Child Protective Services, Investigation Services.****R512-201-1. Authority and Purpose.**

A. Purpose. Promoting protection, Child Protective Services, and safety of children by: accurate and timely investigations; and

1. assessments which determine the capability, willingness, and the availability of resources for achieving safety, permanence and well-being for the children. The DCFS CPS worker shall assess protection, risk, and safety needs of a child, the families strengths, needs, and challenges, capacity and willingness of the family to provide for and protect the child, and determine appropriate services.

2. Authority. Pursuant to Sections 62A-4a-105 and 62A-4a-202.3, the Division of Child and Family Services (DCFS) is authorized to provide child protective services.

R512-201-2. Definitions.

A. Immediate Protection and Safety Assessment: An organized protocol whereby DCFS or another agency gathers information to identify the strengths and challenges and other factors of the family members that may contribute to safety or risk issues of a child who may be an alleged victim of abuse, neglect, or dependency.

R512-201-3. Qualifications.

A. Children who are the subject of a referral for child abuse, neglect, or dependency qualify for investigation services, as described in Section 62A-4a-403 and DHS Rule, R512-200, Child Protective Services, Intake Services.

R512-201-4. Scope of Services.

A. A CPS investigation shall include (but is not limited to) the following:

B. Immediate Protection and Safety Assessment for the Child

The DCFS CPS worker shall assess the immediate protection safety needs of a child and the family's capacity to protect the child. The DCFS CPS worker shall include a domestic violence assessment.

C. CPS Investigation and Assessment. In addition to the requirements of Sections 62A-4a-202.3 and 62A-4a-409, a CPS investigation may include, but is not limited to, the following:

1. Assessment of immediate risk, safety, and protection needs of a child to include an assessment of risk, that an absent parent or cohabitant may pose to the child.

2. assessment of risk, protection, and safety needs for any siblings or other children residing in the home as sibling or child at risk. Complete the team consultation of each case.

3. Assessment of the family's strengths, needs, challenges, limitations, struggles, ability, and willingness to protect the child.

4. Determination of eligibility for enrollment or membership in a Native American tribe.

5. Medical or mental health evaluations completed as required by statute within required time frames to negate or lessen the possibility of physical injury, severe physical abuse, medical neglect, exposure to a hazardous, illegal chemical environment, or recent sexual abuse.

C. Availability.

1. CPS Services are available in all geographic regions of the state.

2. Transfer of a Case When a Child has Moved Out of the State of Utah. DCFS regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child has moved out of the state.

3. If the child and family move outside the state of Utah before the DCFS CPS worker is able to make the face-to-face

contact with the child and the new location of the child and family is known, the DCFS CPS worker shall contact the state child welfare agency where the family has moved and request courtesy casework. If the state child welfare agency where the family has moved refuses to complete courtesy casework, the case shall be closed as "unable to locate." If the receiving state child welfare agency agrees to complete the courtesy casework, the DCFS CPS worker shall make the appropriate finding based on information from the receiving state.

4. If the child and family move outside the state of Utah after the DCFS CPS worker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are known, the DCFS CPS worker who began the investigation shall contact the state child welfare agency where the family has moved and shall make a request for courtesy casework referral, providing the information that was obtained in the investigation. The case shall be closed as "unable to complete investigation" unless the information obtained meets the standard of "reasonable cause to believe" that the abuse, neglect, or dependency occurred. If a finding of "supported" is made against one or both of the parents/caregivers, upon case closure a Notice of Agency Action shall be sent to the address of family in their current state of residence.

a. If the facts of the investigation establish reason to suspect the child is in imminent danger, CPS shall make appropriate referrals to CPS and law enforcement in the other state and screen the case with the Assistant Attorney General for legal action.

5. If the child and family move out of the state of Utah after the DCFS CPS worker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are unknown, the DCFS CPS worker shall make reasonable efforts to locate the family in order to make a referral to request courtesy casework from the state child welfare agency where the family now resides. Reasonable efforts include (but are not limited to) contacting the post office for a forwarding address and checking with the school to obtain the address where records are being transferred when there is a school-age child in the home.

6. Transfer of a Case When a Child has Moved Within the State of Utah. Regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child who is the subject of the investigation has moved within the state of Utah.

7. Request for Courtesy Casework. A DCFS CPS worker may request courtesy assistance for completion of specific investigative activities on an open CPS case when the child or other related individual is not accessible to the assigned DCFS CPS worker.

8. Courtesy Casework Request from Another State. A DCFS CPS worker shall assist in the protection and supervision of a child under the jurisdiction of another state.

C. Duration of Services.

1. Unable to Locate Within the State of Utah. A DCFS CPS worker shall not close an investigation solely on the grounds that the child could not be located until reasonable efforts have been made by the caseworker to locate the child and family members.

2. Case Finding. At the conclusion of a CPS investigation, a finding shall be made for each allegation identified at the time of Intake or identified during the investigation. Each alleged victim in the case shall be linked to a specific allegation or allegations and to an alleged perpetrator or alleged perpetrators. Acceptable findings include:

a. Supported. A case finding of supported shall be used when there is a reasonable basis to conclude that abuse, neglect, or dependency occurred, even if the alleged perpetrator is unknown.

b. Unsupported. A case finding of unsupported/not

R512. Human Services, Child and Family Services.**R512-202. Child Protective Services, General Allegation Categories.****R512-202-1. Authority and Purpose.**

A. Pursuant to Section 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide Child Protective Services (CPS).

R512-202-2 Categories.

A. Qualification for Services. Referral and Investigation Allegation Categories for Abuse Neglect and Dependency. The Division worker receiving or investigating a report of child abuse, neglect, or dependency shall categorize the information into an allegation category. Severe and chronic categories of abuse and neglect are found in Sections 62A-4a-101 and 62A-4a-116.1. This rule contains the allegation categories that are not severe or chronic.

Abuse:

1. Child endangerment:
 - a. Driving under the influence with children in the vehicle;
 - b. Homes where there are lab paraphernalia, chemicals for manufacturing illegal drugs, access to illegal drugs, distribution of illegal drugs in the presence of a child, or loaded weapons within the reach of the child, or exposure to pornography;
 - c. Giving children illegal drugs or substances, alcohol, tobacco or non-prescribed/not recommended medications for that child;
 - d. Involving a child in the commission of crimes, such as shoplifting;
 - e. Other circumstances endangering a child.
2. Domestic Violence Related Child Abuse:
 - a. Potential for or actual injury to a child during a domestic violence episode;
 - b. Violent physical and/or verbal altercation between adults, in the presence of a child.
3. Emotional abuse:
 - a. General emotional abuse, such as a pattern or severe isolated incident of:
 - i. Demeaning or derogatory remarks about the child or other family member in the presence of the child;
 - ii. Perception of or actual threatened harm;
 - iii. Corrupting or exploiting the child;
 - iv. Multiple false reports to CPS;
 - v. Terrorizing;
 - vi. Spurning (hostile rejecting);
 - vii. Denying emotional responsiveness;
 - viii. Isolating.
4. Material harmful to a child.
5. Physical abuse:
 - a. Physical abuse, general, excluding any physical abuse as defined herein, including (but not limited to):
 - i. Non-accidental injury to a child that may or may not be visible;
 - ii. Unexplained injuries to an infant or toddler;
 - iii. Unexplained injuries to a disabled or non-verbal child.
 6. Fetal exposure to alcohol or other substances.
 7. Fetal addiction to alcohol or other harmful substances.
 8. Pediatric Condition Falsification (formerly known as Munchausen Syndrome by Proxy).

B. Neglect:

1. Medical neglect. This allegation or finding needs to be based on the opinion of the child's primary care physician or other licensed medical professional. A parent or guardian may obtain a second opinion to be considered in determining medical neglect, at their own expense. A parent or guardian may obtain a second medical opinion to present for consideration by DCFS, but DCFS is not bound by the opinion and shall consider the totality of the facts.

2. Baby Doe (congenital birth defect that parents or

caregiver declines to treat).

3. Failure to thrive, based on the opinion of the child's primary care physician or other licensed medical professional.
 4. Neglect of child's physical health.
 5. Neglect of child's psychological health.
 6. Neglect of child's dental health.
 7. Pediatric Condition Falsification (formerly known as: Munchausen Syndrome by Proxy).
 8. Physical neglect.
 9. Sibling or child at risk.
 10. Educational neglect occurs when a child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner, Sections 62A-4a-101(14)(a)(iv), 62A-4a-101(14)(b), and 78-3a-316.
 11. Failure to protect.
 12. Non-supervision.
 13. Abandonment.
 14. Environmental neglect. Physical neglect of the environment such as absence of utilities, home conditions below minimum standards, hazards, etc.
 15. Dependency. A child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian. Institutionalization of a parent or guardian who has not or cannot arrange for safe and appropriate care for the child.
- C. Court ordered investigation. When a court orders an investigation on a case when the allegation is not one of the categories listed in this rule, the allegation category is court ordered.
- D. Availability.
1. CPS Services are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

September 3, 2003

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R512. Human Services, Child and Family Services.**R512-300. Out-of-Home Services.****R512-300-1. Purpose and Authority.**

A. The purposes of Out-of-Home Services are:

1. To provide a temporary, safe living arrangement for a child placed in the custody of the Division of Child and Family Services (Child and Family Services) or the Department of Human Services by court order or through voluntary placement by the child's parent or legal guardian.

2. To provide services to protect the child and facilitate the safe return of the child home or to another permanent living arrangement.

3. To provide safe and proper care and address the child's needs while in state custody.

B. Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 472 authorizes federal foster care. 42 USC Sections 471 and 472 (2006), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-300-2. Definitions.

The following terms are defined for the purposes of this rule:

A. Custody by court order means temporary custody or custody authorized by Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings or Section 78-3a-118. It does not include protective custody.

B. Child and Family Services means the Division of Child and Family Services.

C. Department means the Department of Human Services.

D. Least restrictive means most family-like.

E. Placement means living arrangement.

R512-300-3. Scope of Services.

A. Qualification for Services. Out-of-Home Services are provided to:

1. A child placed in the custody of Child and Family Services by court order and the child's parent or guardian, if the court orders reunification;

2. A child placed in the custody of the Department by court order for whom Child and Family Services is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;

3. A child voluntarily placed into the custody of Child and Family Services and the child's parent or guardian.

B. Service Description. Out-of-Home Services consist of:

1. Protection, placement, supervision, and care of the child;

2. Services to a parent or guardian of a child receiving Out-of-Home Services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.

3. Services to facilitate another permanent living arrangement for a child receiving Out-of-Home Services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.

C. Availability. Out-of-Home Services are available in all geographic regions of the state.

D. Duration of Services. Out-of-Home Services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.

R512-300-4. Child and Family Services Responsibility to a Child Receiving Out-of-Home Services.

A. Child and Family Team.

1. With the family's assistance, a child and family team shall be established for each child receiving Out-of-Home Services.

2. At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

B. Assessment.

1. A written assessment is completed for each child placed in custody of Child and Family Services through court order or voluntary placement and for the child's family.

2. The written assessment evaluates the child and family's strengths and underlying needs.

3. The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

4. Assessment is ongoing.

C. Child and Family Plan.

1. Based upon an assessment, each child and family receiving Out-of-Home Services shall have a written child and family plan in accordance with Section 62A-4a-205.

2. The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

3. In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:

a. The current strengths of the child and family as well as the underlying needs to be addressed.

b. A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

c. Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.

d. If the child is age 14 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

e. A visitation plan for the child, parents, and siblings, unless prohibited by court order.

f. Steps for monitoring the placement and plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

g. If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

4. The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.

5. A copy of the completed child and family plan shall be provided to the parent or guardian, Out-of-Home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

D. Permanency Goals.

1. A child in Out-of-Home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

2. Permanency goals include:

a. Reunification.

b. Adoption.

c. Guardianship (Relative).

d. Guardianship (Non-Relative).

e. Individualized Permanency.

3. For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.

4. The primary permanency goal shall be reunification unless the court has ordered that no reunification efforts be offered.

5. A determination that Transition to Adult Living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in Transition to Adult Living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

E. Placement.

1. A child receiving Out-of-Home Services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

2. The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by Child and Family Services.

3. Placement decisions are based upon the child's needs, strengths, and best interests.

4. The following factors are considered in determining placement:

- a. Age, special needs, and circumstances of the child;
- b. Least restrictive placement consistent with the child's needs;
- c. Placement of siblings together;
- d. Proximity to the child's home and school;
- e. Sensitivity to cultural heritage and needs of a minority child;
- f. Potential for adoption.

5. A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

6. Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

7. When a young woman in state custody is the mother of a child and desires and is able to parent the child with the support of the Out-of-Home caregiver, the child shall remain in the Out-of-Home placement with the mother. Child and Family Services shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

8. The child and family team may recommend a Transition to Adult Living placement for a child age 14 years or older in accordance with Rule R512-305 when in the child's best interests.

G. Federal Benefits.

1. Child and Family Services may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving Out-of-Home Services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

2. Child and Family Services may apply to be protective payee for a child in state custody who has a source of unearned income, such as Supplemental Security Income or Social Security Income. A representative payee account shall be maintained by Child and Family Services for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

H. Visitation with Familial Connections.

1. The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

2. Visitation is not a privilege to be earned or denied based

on behavior of the child or the parent or guardian.

3. Visitation may be supplemented with telephone calls and written correspondence.

4. The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

5. Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

6. If clinically contraindicated for the child's safety or best interests, Child and Family Services may petition the court to deny or limit visitation with specific individuals.

7. Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

8. A parent whose parental rights have been terminated does not have a right to visitation.

I. Out-of-Home Worker Visitation with the Child.

1. The Out-of-Home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an Out-of-Home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

J. Case Reviews.

1. Pursuant to Sections 78-3a-311.5, 73-3a-312, and 78-31-313, periodic reviews of court ordered Out-of-Home Services shall be held no less frequently than once every six months.

2. Child and Family Services shall seek to ensure that each child receiving Out-of-Home Services has timely and effective case reviews and that the case review process:

- a. Expedites permanency for a child receiving Out-of-Home Services,
- b. Assures that the permanency goals, child and family plan, and services are appropriate,
- c. Promotes accountability of the parties involved in the child and family planning process, and
- d. Monitors the care for a child receiving Out-of-Home Services.

K. Maximum Number of Children in Out-of-Home Care.

1. At no time during the fiscal year will the proportion of children in Out-of-Home care for over 24 months exceed one-third of the total number of children currently in Out-of-Home care.

2. On an annual basis, the statewide quality improvement committee will review data on the proportion of children in foster care over 24 months and the steps taken by Child and Family Services to ensure that proportion is not exceeded. As appropriate, recommendations for improvement will be made from the committee to Child and Family Services administration.

KEY: social services, child welfare, domestic violence, child abuse

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62A-4a-105

42 U.S.C. 671

R512. Human Services, Child and Family Services.**R512-301. Out of Home Services, Responsibilities Pertaining to a Parent or Guardian.****R512-301-1. Purpose and Authority.**

A. The purposes of this rule are to clarify:

1. Roles and responsibilities of the Division to a parent or guardian of a child receiving out of home services in accordance with R512-300, and

2. Roles and responsibilities of a parent or guardian while a child is receiving out of home services.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-301-2. Definitions.

The following terms are defined for the purposes of this rule:

A. Division means the Division of Child and Family Services.

B. Out of Home Services means those services defined in Rule R512-300.

C. Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

R512-301-3. Division Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out of Home Services when Reunification is the Primary Permanency Goal.

A. The Division is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate in accordance with Section 62A-4a-203 or when a child has been placed with the Division through a voluntary placement.

B. The Division shall actively seek the involvement of the parent or guardian in the Child and Family Team process, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and concurrent permanency goals as described in Section R512-300-4.

C. The Child and Family Plan shall not only address child's strengths and needs, but shall also address the family's strengths and underlying needs. In accordance with Section 62A-4a-205, the plan shall identify specifically what the parents must do in order for the child to be returned home, including how those requirements may be accomplished behaviorally and how they shall be measured. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, care and familial connections.

D. In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parent in plan development.

E. The parent or guardian and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan.

F. The worker shall have regular contact with the parent or guardian to facilitate progress towards goal achievement as determined by the needs of the parent and the recommendations of the Child and Family Team. At a minimum, the worker shall visit the parent or guardian at least once per month.

G. The Division shall make efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence. Visitation requirements specified in Section R512-300-4 apply.

H. The Division shall also make efforts to engage a parent or guardian in appropriate parenting tasks such as attending school meetings and health care visits.

I. The parent or guardian has a right to reasonable notice

and may participate in court and administrative reviews for the child in accordance with 42 USC Section 475(6) and Section 78-3a-314.

R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out of Home Services when Reunification is the Primary Permanency Goal.

In addition to responsibility to comply with orders made by the court, a parent or guardian has responsibility to:

A. Participate in the Child and Family Team process.

B. Provide input into the assessment and Child and Family Plan development process to help identify changes in behavior and actions necessary to enable the child to safely return home.

C. Complete goals and objectives of the plan.

D. Communicate with the worker about progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

E. Maintain communication and frequent visitation with the child in accordance with Section R512-300-4, when not prohibited by the court.

F. Provide information necessary to determine the child's eligibility for Federal benefits while in care in accordance with Section R512-300-4, including information on household income, assets, and household composition.

G. Provide financial support for the child's care in accordance with 42 USC Subsection 471(a)(19) and Sections 62A-4a-114 and 78-3a-906, unless deferred or waived as specified in R495-879.

R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.

A. In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

B. The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

1. The risk factors that led to the placement were acute rather than chronic.

2. The family assessments (including factors such as the initial risk assessment, level of informal and formal supports available to the family, and family history, including past patterns of behavior) conclude that the parent appears to possess or have the potential to develop the ability to ensure the child's safety and provide a nurturing environment.

3. The parent is committed to the child and indicates a desire to have the child returned home.

4. The child has a desire for reunification as determined using age appropriate assessments.

5. Members of the Child and Family Team support a reunification plan.

6. If the parent is no longer living with the individual who severely abused the minor, reunification may be considered if the parent is able to implement a plan that ensures the child's on-going safety.

7. Existence of factors or exceptions that preclude reunification as specified in Section 78-3a-311.

C. The Division shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services such as:

1. the parent's failure to respond to previous services or service plan;

2. the child being abused while the parent was under the influence of drugs or alcohol;

3. continuation of a chaotic, dysfunctional lifestyle;

4. the parent's past history of violent behavior;

5. the testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be

successfully changed.

R512-301-6. Return Home and Trial Home Placement.

A. When a child and family's safety needs have been met and the original reasons and risks have been reduced or eliminated, the child may return home, when allowable by court order or in conjunction with provisions of a voluntary placement.

B. The Child and Family Team shall plan for the transition and return home prior to the child being returned.

C. The Division shall provide reasonable notice (unless otherwise ordered by the court) of the date child will be returning home to all pertinent parties such as child, parents, guardian ad litem, foster care provider, school staff, therapist, and partner agencies, so all parties can be adequately prepared for the return home.

D. Prior to and when the child is returned home, the Division shall provide services directed at assisting the child and family with the transition back into the home and contact relevant parties to that no further abuse or neglect is occurring.

E. If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification services may be utilized in accordance with Rule R512-100.

F. A child may be returned home for a trial home visit for up to 60 days. The trial home visit shall continue until the court has terminated agency custody.

R512-301-7. Voluntary Relinquishment of Parental Rights.

A. When it is not in a child's best interest to be reunified with the child's parents, the Division may explore with both parents the option of voluntary relinquishment in accordance with Section 78-3a-414.

B. If the child is Indian, provisions of the Indian Welfare Act, 25 USC Section 1915, incorporated by reference, shall be met.

R512-301-8. Termination of Parental Rights.

A. If a court determines that reunification services are not appropriate, the Division shall petition for termination of parental rights in accordance with 42 USC Section 475 (5)(E), 42 CFR 1356.21(i), and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21(i)(2) or Subsection 62A-203.5(3) apply.

B. The Division shall document in the Child and Family Plan care by kin or a compelling reasons for determining that filing for termination of parental rights is not in the child's best interests and shall make the plan available to the court for review.

C. When the Division files a petition to terminate parental rights, the worker must also concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the Child and Family Plan as specified in Section R512-300-4.

D. If the child is Indian, provisions of the Indian Welfare Act, 25 USC Section 1915, incorporated by reference, shall be met.

E. The Division shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired.

KEY: social services, child welfare, domestic violence, child abuse

September 3, 2003

62A-4a-105

Notice of Continuation August 20, 2008

R512. Human Services, Child and Family Services.**R512-302. Out of Home Services, Responsibilities Pertaining to an Out of Home Caregiver.****R512-302-1. Purpose and Authority.**

A. The purposes of this rule are to clarify:

1. Qualification, selection, payment criteria, and roles and responsibilities of a caregiver while a child is receiving out of home services, and

2. Roles and responsibilities of the Division to a caregiver for a child receiving out of home services in accordance with R512-300.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-302-2. Definitions.

In addition to definitions in Section R512-300-2, the following terms are defined for the purposes of this rule:

A. Caregiver means a licensed resource family, also known as a licensed foster family, and may also include a licensed kin provider. Caregiver does not include a group home or residential facility that provides out of home services under contract with the Division.

B. Cohabiting means residing with another person and being involved in a sexual relationship.

C. Involved in a sexual relationship means any sexual activity and conduct between persons.

D. Out of Home Services means those services described in Rule R512-300.

E. Residing means living in the same household on an uninterrupted or an intermittent basis.

R512-302-3. Qualifying as a Caregiver for a Child Receiving Out of Home Services.

A. An individual or couple shall be licensed by the Office of Licensing as provided in Rule R501-12 to qualify as a caregiver for a child receiving out of home services. After initial licensure, the caregiver shall take all steps necessary for timely licensure renewal to ensure that the license does not lapse.

B. The Division or contract provider shall provide pre-service training required in Section R501-12-5 after the provider has held an initial consultation with the individual or couple to clearly delineate duties of caregivers.

C. The curriculum for pre-service and in-service training shall be developed by the contract provider and approved by the Division according to the Division's contract with the provider.

D. The Division or contract provider shall verify in writing a caregiver's completion of training required for licensure as provided in Section R501-12-5.

E. The Division or contract provider shall also verify in writing a caregiver's completion of supplemental training required for serving children with more difficult needs.

F. Once a license is issued, the caregiver's name and identifying information may be shared with the court, assistant attorney general, guardian ad litem, foster parent training contract provider, resource family cluster group, foster parent associations, the Department of Health, the Foster Care Citizen Review Board, and the child's primary health care providers.

R512-302-4. Selection of a Caregiver for a Child Receiving Out of Home Services.

(1) A caregiver shall have the experience, personal characteristics, temperament, and training necessary to work with a child and the child's family to be approved and selected to provide out of home services.

(2) An out-of-home caregiver shall be selected according

to the caregiver's skills and abilities to meet a child's individual needs and, when appropriate, an ability to support both parents in reunification efforts and to consider serving as a permanent home for the child if reunification is not achieved. When dictated by a child's level of care needs, the Division may require one parent to be available in the home at all times.

(3) An out-of-home caregiver shall be selected according to the caregiver's compatibility with the minor, as determined by the agency exercising its professional judgment. The best interest of the child shall be the agency's primary consideration when making a placement decision.

(a) The agency may consider the out-of-home caregiver's possession or use of a firearm or other weapon, espoused religious beliefs, or choice to school the minor outside the public education system in accordance with Section 63-46b-2.1.

(b) The agency may consider the child's sex, age, behavior, and the composition of the foster family.

(4) A child in agency custody shall be placed with an out of home caregiver who is fully licensed as provided in Rule R501-12. A child may be placed in a home that is conditionally licensed only if the out of home caregiver is a kinship placement.

(5) An out of home caregiver shall be given necessary information to make an informed decision about accepting responsibility to care for a child. The worker shall obtain all available necessary information about the child's permanency plan, family visitation plans, and needs such as medical, educational, mental health, social, behavioral, and emotional needs, for consideration by the caregiver.

(6) If the court has not given custody to a non-custodial parent or kin provider, to provide safety and maintain family ties, the child shall be placed in the least restrictive placement that meets the child's special needs and is in the child's best interests, according to the following priorities:

(a) With siblings.

(b) In the home of licensed kin.

(c) With a licensed caregiver, group, or residential provider within reasonable proximity to the child's family and community, if the goal is reunification.

(d) With a licensed caregiver, group, or residential provider not in reasonable proximity to the child's family and community.

(7) If a child is reentering custody of the Division, the child's former out of home caregiver shall be given preference as provided in Section 62A-4a-206.1.

(8) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the out of home caregiver or the child involved.

(9) Selection of a out of home caregiver for an Indian child shall be made in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

R512-302-5. Division Roles and Responsibilities to a Caregiver for a Child Receiving Out of Home Services.

A. The Division shall actively seek the involvement of the caregiver in the child and family team process, including participation in the child and family team, completing an assessment, and developing the child and family plan as described in Section R512-300-4.

B. The child and family plan shall include steps for monitoring the placement and a plan for worker visitation and supports to the out of home caregiver for a child placed in Utah or out of state.

C. In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's caregiver in plan development.

D. The caregiver shall be provided a copy of the completed child and family plan.

E. The caregiver has a right to reasonable notice and may

participate in court and administrative reviews for the child in accordance with 42 USC Section 475(5) and Sections 78-3a-309 and 78-3a-314.

F. The Division shall provide support to the caregiver to ensure that the child's needs are met, and to prevent unnecessary placement disruption.

G. Options for temporary relief may include paid respite, non-paid respite, childcare, and babysitting.

H. The worker shall provide the caregiver with a portable, permanent record that provides available educational, social, and medical history information for the child and that preserves vital information about the child's life events and activities while receiving out of home services.

R512-302-6. Roles and Responsibilities of a Caregiver of a Child Receiving Out of Home Services.

A. An out of home caregiver shall be responsible to provide daily care, supervision, protection and experiences that enhance the child's development as provided in a written agreement entered into with the Division and the child and family plan.

B. The caregiver shall be responsible to:

1. Participate in the child and family team process.
2. Provide input into the assessment and child and family plan development process.
3. Complete goals and objectives of the plan relevant to the caregiver.
4. Promptly communicate with the worker the child's progress and concerns and progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames. Support and assist with parental visitation

C. The caregiver shall document individualized services provided for the child, when required, such as skills development or transportation.

D. The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving out of home services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

D. The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving out of home services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

R512-302-7. Payment Criteria for a Caregiver of a Child Receiving Out of Home Services.

A. An out of home caregiver shall receive payments according to the rate established for the child's need level, not upon the highest level of service the caregiver has been trained to provide.

B. The daily rate for the monthly foster care maintenance payment provides for the child's board and room, care and supervision, basic clothing and personal incidentals, and may also include a supplemental daily payment based upon a child's medical need or to assist with care of a youth's child while residing with the youth in an out of home placement. Foster care maintenance may also include periodic one-time payments for special needs such as an initial clothing allowance, additional needs for a baby, additional clothing, gifts, lessons or equipment, recreation, non-tuition school expenses, and other needs recommended by the child and family team and approved by the Division.

C. A caregiver may also be reimbursed for transporting a foster child for visitation with a parent or siblings, to participate in case activities such as child and family team meetings and reviews, and for transporting the child to activities beyond those normally required for a family. The caregiver must document all mileage on a form provided by the Division.

D. The caregiver shall submit required documentation to receive payments for care or reimbursement for costs.

R512-302-8. Child Abuse Reporting and Investigation of a Caregiver Providing Out of Home Services.

A. Investigation of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living with an out of home caregiver shall be investigated by a contract agency or law enforcement as provided in Section 62A-4a-202.5.

R512-302-9. Removal of a Child from a Caregiver Providing Out of Home Services.

A. Removal of a child from a caregiver shall occur as provided in Section 62A-4a-206 and Rule R512-31.

R512-302-10. Cohabitation Not Permitted for Foster Parents.

A. foster parent or foster parents must complete a declaration of compliance with Section 78-30-9(3)(a and b) that they are not cohabiting with another person in a sexual relationship. Beginning May 1, 2000, the division gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in the divisions' custody may be foster parents pursuant to Section 78-3a-307(5).

**KEY: child welfare
September 9, 2004
Notice of Continuation August 20, 2008**

62A-4a-105

R512. Human Services, Child and Family Services.**R512-305. Out of Home Services, Transition to Adult Living Services.****R512-305-1. Purpose and Authority.**

A. The purpose of Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out of home services in accordance with R512-300 to transition to self-sufficiency in adulthood and to provide support to youth upon leaving agency custody. TAL is a continuum of services that begins while youth are in care and continues through post-discharge with the Young Adult Resource Network (YARN).

B. TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (1999), incorporated by reference.

R512-305-2. Scope of Services.

A. Qualification for and duration of services:

1. TAL services are required for all youth receiving out of home services, age 14 or older, until agency custody is terminated regardless of permanency goal, as specified in R512-300-4.D.

2. The YARN provides services for youth if they are no longer in care and are not yet 21, and the youth:

a. Ages out of foster care, or

b. While in foster care, after the age of 14, the youth received at least 12 consecutive months of TAL services and the court terminated reunification.

B. Service description:

1. TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping foster youth achieve five fundamental aspects of adult life, including safe and affordable housing, educational attainment and stable employment, health care access, positive sense of self, and supportive and enduring relationships.

2. YARN consists of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills Classes and may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.

C. Availability:

1. TAL services and YARN are available in all geographic regions of the state.

2. TAL services and YARN are available on the same basis to Indian youth who are or were formerly in Tribal custody within the boundaries of the state.

R512-305-3. Transition to Adult Living Services for a Youth in Agency Custody.

A. The caseworker, with the assistance of the youth and Child and Family Team, ensure completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.

B. Based upon the empirically validated life skills assessment, a plan is developed that identifies the youth's strengths, needs, and specific services.

C. The Child and Family Team determines the TAL plan. Youth aged 14 or older are required to have a TAL plan, with youth 16 or older taking the lead in setting goals and facilitating the Child and Family Team with staff guidance.

D. The TAL plan includes a continuum of training and services to be completed by the youth, and designated team members, in such settings as the foster home, with a therapist, at school, or through other community-based resources and programs.

E. Basic Living Skills training shall be offered to each

youth who attains age 16. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).

F. Each youth who completes Basic Living Skills training may receive a completion payment.

R512-305-4. Transition to Adult Living Placement for a Youth in Agency Custody.

A TAL placement may be used as an alternative to out of home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living arrangements for youth in this situation include living with kin; living with former out of home caregivers while paying rent; living in the community with roommates of the same sex; living alone; living in a group facility, YWCA, boarding house, or dorm; living with an adult who has passed a background check or the placement was assessed and approved by the regional director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following practice guidelines are met:

A. A TAL placement may be used as an out-of-home care placement.

B. A youth must be at least 16 years of age to be in a TAL placement.

C. The Child and Family Team is responsible to determine if a recommendation for a TAL placement for a youth is appropriate.

D. The regional director or designee is authorized to approve a TAL placement.

E. The worker and youth shall complete a contract outlining responsibilities and expectations while in the placement.

F. The worker shall visit with and monitor progress of the youth at an interval determined by the Child and Family Team, but no less frequently than once per month.

G. The youth may receive a TAL stipend while in the TAL placement.

H. If the TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.E.

R512-305-5. Division Responsibility to a Youth Leaving Out of Home Services.

A. The YARN provides support to youth who leave out of home care, as specified in R512-305-2.

B. A youth may access services by contacting a Division office and being referred to a regional TAL coordinator.

C. Services may include additional basic life skills training, information and referral, mentoring, computer access for resources, and follow-up support. Funds may also assist eligible youth in the four areas listed below:

1. Education, Training, and Career Exploration.

2. Physical, Mental Health and Emotional Support.

3. Transportation.

4. Housing Support.

D. Funds used for room and board are subject to federal limits.

KEY: social services, child welfare, foster care, Transition to Adult Living

June 19, 2006

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62A-4a-105

R512. Human Services, Child and Family Services.**R512-500. Kinship Services. Placement and Background Screening.****R512-500-1. Purpose and Authority.**

(1) The purpose of this rule is to establish standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

(2) This rule is authorized by Sections 62A-4a-209, 78A-6-307, 78A-6-307.5, and the Indian Child Welfare Act (ICWA), 25 U.S.C. Sections 1901-63.

R512-500-2. Definitions.

(1) "Abuse" is defined in Section 78A-6-105.

(2) "Child" is defined in Section 62A-4a-101.

(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Friend" means an individual, other than a non-custodial parent or relative as defined in Section 78A-6-307, who is licensed as a foster parent and is designated for preference for care of a child by a custodial parent or guardian of the child in accordance with Section 62A-4a-209.

(5) "Kinship caregiver" means a non-custodial parent, relative, or friend, as defined in this section, who is selected for placement and care of a child in Child and Family Services custody.

(6) "Neglect" is defined in Section 78A-6-105.

(7) "Non-custodial parent" is a natural parent as defined in Section 78A-6-307 who is a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has had paternity established, who has not been granted legal custody of the child.

(8) "Non-relative" is defined in Section 62A-4a-209.

(9) "Preliminary Placement" means an out-of-home placement with a non-custodial parent or relative, or with a friend who is a licensed foster parent, which is referred to in statute as an emergency placement with a non-custodial parent or relative as authorized in Section 62A-4a-209 or a post-shelter hearing placement with a non-custodial parent or relative as authorized in Section 78A-6-307.5.

(10) "Relative" is defined in Section 78A-6-307 as the child's "grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child." For an Indian child, relative also includes "extended family members" as defined by the ICWA, 25 U.S.C. Section 1901-63, which is "by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

(11) "severe type of child abuse or neglect" is defined in Section 62A-4a-1002.

(12) "substantiated" is defined in Section 62A-4a-101.

(13) "supported" is defined in Section 62A-4a-101.

R512-500-3. Philosophy.

(1) All children need permanency through enduring relationships that provide stability, familiarity, and support for the culture of the child; support the child's sense of self based on existing attachments; provide for the child's safety and physical care; and connect the child to their past, present, and future through continuing family relationships. First priority is to maintain a child safely at home. However, if a child cannot safely remain at home, kinship care has the potential for providing these elements of permanency by virtue of the kin's knowledge of and relationship to the family and child.

(2) All kinship work is done in the context of a Child and Family Team. Kinship care includes elements of child protection, in-home services, family preservation, and foster care. When a child cannot safely remain home, kinship care is preferable to other out-of-home placements if the kinship caregiver can keep the child safe and appropriately meet the child's needs.

(3) The caregiver's willingness and ability to care for and keep the child safe are fundamental. The kinship caregiver must have or acquire knowledge of the child, be able to meet the child's needs, support reunification efforts, and be able to provide the child access to parents, siblings, and other family members through visits or caring for the child and siblings as a group.

(4) Ongoing assessment of the child's safety, permanence, and well-being is important to the stability and value of kinship care. Ongoing assessment of safety is based on the components of safety decision-making, which include threats of harm, vulnerabilities of the child, and protective capacities of the kinship caregiver and their support system.

(5) Providing for kinship care in the Child and Family Services spectrum of services requires active efforts to identify and locate kin families with whom children may form or continue relationships at home or in temporary or permanent placements. Support to kinship caregivers is essential to the success of the child's placement with the family and to the family's ability to respond to the needs of the child. As members of the Child and Family Team, kinship caregivers will seek support from other family members and from informal and formal supports to provide for the child.

R512-500-4. Preferences for Placement.

(1) The following order of preference applies to placement of a child in the custody of Child and Family Services, and is subject to the child's best interest:

(a) A non-custodial parent of the child in accordance with Section 78A-6-307;

(b) A relative of the child;

(c) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(d) A former foster placement, shelter facility, or other foster placement designated by Child and Family Services.

(2) Preferential consideration given to kinship caregivers in Subsection 78A-6-307(18) expires 120 days from the date of the shelter hearing. Prospective kinship caregivers may be considered for placement after the 120 days has lapsed, if it is in the best interest of the child.

R512-500-5. Preliminary Placement.

(1) The requirements specified in Section 62A-4a-209 must be met for Preliminary Placement of a child with a kinship caregiver.

(2) A decision to make a Preliminary Placement of a child with a kinship caregiver will include background screening, assessment of the kinship caregiver's willingness and ability to care for a child and to keep the child safe, a limited home inspection, and background screening.

(3) A kinship caregiver must meet the background check requirements specified in R512-500-7(1).

(4) Assessment of safety will be based on safety decision-making principles, which include:

(a) Potential threats of harm;

(b) Vulnerabilities of the child; and

(c) Protective capacities of the potential kinship caregiver and their support system.

(5) The limited home inspection specified in Section 62A-4a-209 is required for a non-custodial parent or relative. The limited home inspection is conducted in the home of the prospective kinship caregiver to determine if there are apparent

safety risks in the home that present a potential threat of harm to the child. The limited home inspection determines if the following are met:

- (a) The home is free from observable health and fire hazards.
- (b) There are adequate sleeping arrangements to meet the specific needs of each child.
- (c) Any firearms, ammunition, hazardous chemicals, and/or medications are secured and not accessible to children.
- (6) References may be contacted to obtain input regarding placing the child with the potential kinship caregiver or information about other available relatives or friends who may care for the child.

R512-500-6. Evaluation of Capacity for Ongoing Care of a Child.

(1) Child and Family Services will evaluate with the family their capacity for ongoing care of the child. The components of the evaluation process include:

- (a) Results of the background screening specified in R512-500-7(2).
- (b) The child-specific home study, including:
 - (i) Physical and emotional ability of the kinship caregiver to provide adequate care for the child;
 - (ii) Understanding of family dynamics and how placement will impact relationships within the family;
 - (iii) Ability to provide for the child's safety and well-being needs and to support a plan for permanency;
 - (iv) Analysis of the type of resources and support needed by the kinship caregiver to care for the child.
 - (v) Ability of the home to meet required safety standards of the Office of Licensing.
- (c) Providing information to the kinship caregiver to assist with considering options for ongoing care of the child, including:
 - (i) Educating the kinship caregiver of the expectations of caring for a child who is under the jurisdiction of the court.
 - (ii) Assessing the resources that may be available to assist the kinship caregiver in providing a stable placement for the child.
 - (iii) Becoming a licensed foster care placement for the child.
 - (iv) Requesting temporary custody and guardianship from the court.
- (2) A kinship caregiver who meets the definition of friend must be licensed as a foster parent in order for a child in the custody of Child and Family Services to be placed with them.
- (3) Obtain positive written references from two different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child.

R512-500-7. Background Screening.

(1) Background Screening Procedure for Preliminary Placements.

- (a) In order for a non-custodial parent or relative to be considered for Preliminary Placement of a child, background screening must be completed that meets the requirements of Sections 62A-4a-209, 78A-6-307, and 78A-6-308. If any non-relative adults live in the household, applicable background screening requirements in Sections 62A-4a-209, 78A-6-307, and 78A-6-308 must be met.
- (b) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information in order for background screening to be conducted:
 - (i) Full first, middle, last, maiden, alias, and all previous married names.
 - (ii) Social Security number, if a number has been issued.
 - (iii) Proof of identity verified by a government-issued

photo identification.

- (iv) Date of birth.
- (2) Background Screening Procedure for Ongoing Care of a Child.
 - (a) As part of the evaluation of capacity for ongoing care of a child, in addition to background screening required for Preliminary Placement, a relative and spouse or partner must complete an FBI national criminal history records check as prospective foster or adoptive parents. A non-custodial parent will complete an FBI national criminal history check if Utah criminal history or SAFE child abuse checks result in concerns about potential threats of harm to the child or if ordered by the court.
 - (b) If a non-relative 18 years of age or older is residing in the home and has lived outside of the state of Utah in the five years immediately preceding the date of the application, the individual must complete an FBI national criminal history records check.
 - (c) If any person 18 years of age or older residing in the home has lived out of the state of Utah in the five years immediately preceding the date of the application, a child abuse and neglect registry check must be completed for any state in which the individual resided.
 - (d) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information on a form provided by Child and Family Services in order for background screening to be conducted:
 - (i) Full first, middle, last, maiden, alias, and all previous married names.
 - (ii) Social Security number, if a number has been issued.
 - (iii) Proof of identity verified by a government-issued photo identification.
 - (iv) Date of birth.
 - (v) The potential kinship caregiver and applicable adults living in the household shall provide fingerprints from an authorized law enforcement agency or designated electronic scanning site.
 - (vi) The child abuse registry for each state in which a potential kinship caregiver or other adult in the household has lived will be checked.

KEY: child welfare, kinship

August 21, 2008

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78A-6-307

78A-6-307.5

R527. Human Services, Recovery Services.**R527-3. Definitions.****R527-3-1. Definitions.**

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-303, 62A-11-401, and 78B-14-102. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.
3. "ORSIS" means the Office of Recovery Services Computer Information System.
4. "BMC" means the Bureau of Medical Collections.
5. "CIC" means the Bureau for Children in Care.
6. "CSS" means Child Support Services.
7. "MSS" means Management Support Services.
8. "CSU" means the Customer Service Unit.
9. "BFS" means the Bureau of Financial Services.
10. "BET" means the Bureau of Electronic Technology.
11. "OT" means the Office of Technology.
12. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.
13. "IV-D recipient" refers to a person who receives IV-D services.
14. "IV-A" refers to Title IV-A of the Social Security Act.
15. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.
16. "IV-A recipient" refers to a person who receives IV-A benefits.
17. "UIFSA" refers to Title 78B, Chapter 14 (Uniform Interstate Family Support Act) which replaces "URESAs", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).
18. "AFDC" refers to the former Aid to Families with dependent children program.
19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).
20. "Pass-through payment" as used in R527-40-1(3) refers to the first \$50 of the current support that ORS collected for a month in which the custodial parent received AFDC. The IV-A agency paid this amount to the AFDC household prior to March, 1997.
21. "IRS" refers to the Internal Revenue Service.
22. "TPL" means Third Party Liability.

KEY: child support, welfare**March 19, 2003****Notice of Continuation September 4, 2007****62A-11-103****62A-11-303****62A-11-401****78B-14-102**

R527. Human Services, Recovery Services.**R527-200. Administrative Procedures.****R527-200-1. Authority.**

This rule establishes procedures for informal adjudicative proceedings as required by Section 63G-4-203 of the Administrative Procedures Act.

R527-200-2. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-303 and 63G-4-103.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

e. "location information" means the current, verified residential address of a custodial or noncustodial parent and, if different and known to the office, the current, verified residence of any child named in a parent-time order that specifies time periods during which the child shall be with the noncustodial parent as provided in Sections 30-3-32 through 30-3-38. If a current, verified residential address is not available, "location information" means an employment address if known.

f. "other location information" means a verified, non-residential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

g. "files" on custodial and noncustodial parents means records contained in open child support services cases, in which both paper and electronic case information may be stored.

R527-200-3. Purpose.

The purpose of this rule is to:

1. establish the form of proceedings;
2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;
3. provide procedures and standards for orders resulting from the administrative process;
4. provide procedures for informal proceedings;
5. provide procedures for the conduct of hearings and other informal adjudicative proceedings;
6. provide procedures for requesting reconsideration;
7. provide procedures for a motion to set aside a default order;
8. provide procedures for amending an administrative order;
9. provide procedures for setting aside an administrative order; and
10. provide procedures for requesting judicial review.

R527-200-4. Designation of Presiding Officers.

The following persons are designated presiding officers in adjudicative proceedings:

1. agents;
2. senior agents;
3. team managers;
4. quality assurance specialists;
5. associate regional directors;
6. regional directors;

7. directors;

8. other persons designated by the director of the Office of Recovery Services.

R527-200-5. Form of Proceeding.

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

R527-200-6. Informal Adjudicative Proceedings.

The following adjudicative proceedings are considered to be informal:

1. proceedings to establish or modify child support orders;
2. proceedings to determine paternity;
3. proceedings to establish a judgment for genetic testing costs;
4. proceedings to establish a judgment for birth expenses;
5. proceedings to establish or modify an order regarding liability for medical and dental expenses of a dependent child;
6. proceedings to establish an order when a notice to enroll a child in a medical insurance plan is contested;
7. proceedings to establish an order against a garnishee enforcing an administrative garnishment;
8. proceedings to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;
9. proceedings to establish a retained support obligation;
10. proceedings to amend an administrative order;
11. proceedings to set aside an administrative order;
12. proceedings to establish an order which determines past-due support following a request for agency action;
13. proceedings to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients;
14. proceedings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office;
15. proceedings to establish an order of non-disclosure when a determination is made not to disclose a parent's identifying information to another state in an interstate case action;
16. proceedings to approve or deny requests for waiver or deferral of estate recovery for reimbursement of Medicaid;
17. proceedings to determine whether location information or other location information available in files on custodial or noncustodial parents may be released to the requesting party or to the requesting party's legal counsel in accordance with the provisions of Utah Code Title 62A, Chapter 11;
18. proceedings to establish an order when a payment schedule is contested;
19. proceedings to establish an order when a lien-levy action is contested; and
20. proceedings to establish an order when the obligation based on a change in the physical custody of a child is contested.

R527-200-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63G-4 may be served using methods provided by Section 63G-4 or the Utah Rules of Civil Procedure.

R527-200-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings are as follows:

1. In proceedings initiated by a notice of agency action, the presiding officer will issue an order of default unless the

respondent does one of the following within 30 days in response to service of the notice:

- a. pays the entire amount in full; or,
- b. participates as provided in R527-200-13;
2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-10 and the office receives the respondent's written request:
 - a. within 30 days of service of notice of agency action; or
 - b. before an order is issued by the presiding officer.
 3. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:
 - a. the decision;
 - b. the reason for the decision;
 - c. a notice of the right to request reconsideration and the right to petition for judicial review; and
 - d. the time limits for requesting reconsideration or filing a petition for judicial review.
 4. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings or other adjudicative proceedings.
 5. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R527-200-9. Response time for Proceedings Initiated by a Request for Agency Action.

The respondent may request an informal adjudicative proceeding within the following timeframes:

1. within 30 calendar days of the date of the notice when contesting the amount of past-due support in the Annual Notice of Past-due Support;
2. within 15 calendar days of the date of this notice, or within 30 calendar days of the date of this notice if the non-requesting party resides outside of Utah and intervention is required from another IV-D agency to facilitate communication with the non-requesting party, when contesting whether location information or other location information may be released; and
3. within 15 calendar days of the date of the notice when contesting the obligation based on a change in physical custody of the child.

R527-200-10. Availability of a Hearing in Informal Adjudicative Proceedings.

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:
 - a. the proceeding was initiated by a notice of agency action; and
 - b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-11; and
 - c. the respondent participates in a preliminary agency conference.
2. A proceeding before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.
 - a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.
 - b. The requesting party shall not be required to appear, either in person or through representation when the proceeding is conducted, but may choose to attend.

R527-200-11. Hearings in Informal Adjudicative Proceedings.

1. In proceedings initiated by a notice of agency action, all

hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.
3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. Upon determining there is no genuine issue as to a material fact, the presiding officer may deny the request for hearing, and close the adjudicative proceeding.
4. The respondent may object to the denial of a hearing as grounds for relief in a request for reconsideration.
5. There is no genuine issue as to a material fact if:
 - a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and
 - b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.
6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:
 - a. documented wage information from employers or governmental sources;
 - b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;
 - c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;
 - d. failure of the respondent to produce a written agreement in a Non-IV-A case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;
 - e. birth certificates of the children whose support is sought from the respondent;
 - f. certified copies of the latest support orders;
 - g. other applicable documentation.

R527-200-12. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

R527-200-13. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on stipulation are not subject to reconsideration or judicial review.
2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.
3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, but fails to appear for genetic testing or respond to the notice of test results, the presiding officer shall issue an order of paternity and child support based on existing information and circumstances.
4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the

presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to respond to the notice of agency action and does not request a hearing;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount or time periods specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63G-4-209.

7. If a respondent's request for a hearing is denied under R527-200-11, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state and federal tax refunds, submit cases to the federal administrative offset program where permitted by federal regulation, levy upon real and personal property, and to reassess payments on arrearages.

R527-200-14. Conduct of Hearings and Other Informal Adjudicative Proceedings.

1. The hearing, or other proceeding shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing or other adjudicative proceeding in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to

conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

R527-200-15. Agency Review.

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63G-4-302 and 63G-4-401.

R527-200-16. Reconsideration.

Either the respondent or the office may request reconsideration in accordance with Section 63G-4-302 once during an informal adjudicative proceeding.

R527-200-17. Setting Aside Administrative Orders.

1. The office may set aside an administrative order for reasons including the following:

a. A rule or policy was not followed when the order was taken.

b. The respondent was not properly served with a notice of agency action.

c. The respondent was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

2. The office shall notify the respondent of its intent to set the order aside by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the respondent.

R527-200-18. Amending Administrative Orders.

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

R527. Human Services, Recovery Services.**R527-201. Medical Support Services.****R527-201-1. Federal Requirements.**

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and 45 CFR 303.32 which are incorporated by reference in this rule.

R527-201-2. Definition.

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

R527-201-3. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,
2. initiate an action to obtain a judgment for uninsured medical expenses, or
3. collect and disburse premium payments to insurance companies.

R527-201-4. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-5. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

- a. the state initiates an action to establish a final support order or to adjust an existing child support order; or
- b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-6. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-7. Credit for Premium Payments and Effect of**Changes to the Premium Amount Subsequent to the Order.**

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

3. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-8. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

- a. the obligated parent is still employed by the employer;
- b. the employer maintains or contributes to plans providing dependent or family health coverage;
- c. the obligated parent is eligible for the coverage available through the employer; and
- d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact,

ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-9. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

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63G-4-102 et seq.

62A-11-326.1

62A-11-326.2

62A-11-326.3

62A-11-406(9)

78B-12-212

35A-7-105(2)

R527. Human Services, Recovery Services.

R527-255. Substantial Change in Circumstances.

R527-255-1. Authority and Purpose.

1. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide information about when a parent can request a review of the child support amount when a support order is less than three years old, and to identify what must be included for a request for review to be complete. The rule also defines when a change in circumstance is considered temporary or permanent.

R527-255-2. Request for Review based on Substantial Change in Circumstances.

1. A parent may request a less than three year review of a support order based on an alleged substantial change in circumstances. For the request to be complete, the parent must provide documentation of the alleged change at his/her own expense.

R527-255-3. Duration of the Change in Circumstances.

1. If the change in circumstances is projected to be temporary, defined as less than 12 months in duration, the office shall not initiate proceedings to adjust the award.

2. If the change in circumstances is projected to be long term or permanent, defined as 12 months or more in duration, the office shall initiate proceedings to adjust the award pursuant to Sections 78B-12-217 and 78B-12-218.

KEY: child support

August 13, 2008

Notice of Continuation September 4, 2007

62A-11-107

78B-12-217

78B-12-218

62A-11-320.5

62A-11-320.6

R527. Human Services, Recovery Services.**R527-301. Non-IV-D Income Withholding.****R527-301-1. Responsibility of the Office of Recovery Services.**

The responsibility of the Office of Recovery Services is limited to receiving the income withholding, processing the payment, issuing a payment to the custodial parent, and maintaining a payment record. Modifications to the support order or withholding amounts are the responsibility of the parents.

R527-301-2. Child Support Order Does Not Require Immediate Income Withholding.

Either party to the support order may pursue income withholding by filing for an Order/Notice to Withhold in the court, by applying for IV-D child support enforcement services, or by receiving IV-A assistance.

R527-301-3. Collection of Child Care Expenses Through Income Withholding.

Child care expenses shall not be collected through Non-IV-D Income Withholding.

R527-301-4. Enforcement of Notice to Withhold When Payor Fails to Comply.

If a payor fails to comply with the Notice to Withhold, either the custodial parent or the non-custodial parent may proceed with judicial action against the employer to enforce the Notice to Withhold and to obtain a judgment in accordance with Subsections 506 (1)(f) (j) and (k).

R527-301-5. Modification of Income Withholding Amount.

If the Notice to Withhold needs to be modified for any reason, the parent must apply for IV-D services or file for an Order/Notice to Withhold in the court that issued the support order.

R527-301-6. Custodial Parent's Failure to Keep Office Notified of Mailing Address.

The office shall hold income withholding payments for 60 calendar days after the office determines that the custodial parent's address is unknown. During this 60-day period, the office shall make one attempt to locate the custodial parent, using resources available to the office. If the custodial parent's address is still unknown at the end of 60 calendar days, the office shall refund the support to the non-custodial parent. The support shall not accrue interest during the time it is being held to locate the custodial parent.

R527-301-7. Termination of Income Withholding.

At any time after the date income withholding begins, a party to the child support order may request a judicial hearing to determine whether income withholding should be terminated. If the court orders that income withholding should be terminated, the obligee will provide written notice of termination to each payor of income.

KEY: child support**March 18, 1998****Notice of Continuation August 21, 2008****62A-11-502****62A-11-504****62A-11-506****62A-11-508**

R527. Human Services, Recovery Services.

R527-550. Assessment.

R527-550-1. Children Placed in the Custody of the State.

1. ORS shall collect child support and Third Party Payments in behalf of children placed in the custody of the state in accordance with Section 78A-6-1106, 78B-12-101 et seq., 62A-1-117, 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.

2. The monthly child support obligation will be determined in accordance with the child support guidelines enacted in Section 78B-12-201 et seq. If a current child support order exists, ORS may collect and enforce the support based on the existing order in accordance with Section 78B-12-108. ORS may conduct a review of the existing support order and the parent's current financial circumstances to determine if the order is in compliance with the child support guidelines and if the case meets the review criteria in accordance with Sections 62A-11-320.5 and 62A-11-320.6. If the order is not in compliance with the child support guidelines but still meets the review criteria, an administrative order may be issued, under the administrative adjudication process as provided in rule R497-100-1 et seq., while the child is under the jurisdiction of the juvenile court and in a placement other than with his parents.

3. If an administrative order for support is issued at the time the child is placed in custody; and,

a. the child returns home; and,

b. the child is subsequently returned to state custody, ORS may collect and enforce child support based on the existing administrative order in accordance with Section 78-3a-906.

4. Third party payments are defined, but not limited to, entitlement benefits (SSA, SSI), insurance benefits, trust funds benefits, paid in behalf of the child.

5. Child support is due and payable on the first day of the month. Child support shall not be pro-rated for partial months.

R527-550-3. Public Assistance Overpayments/Retained Support.

A. Obligor not on Assistance.

1. The obligor will be asked to complete an income asset affidavit.

2. The total liability shall be reviewed with the obligor.

3. The obligor will be requested to pay the total obligation in full.

4. If total payment is not possible, the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.

5. This information will be used to determine a monthly repayment amount. When feasible, the monthly repayment amount shall be no less than 10% of the household income and liquid resources.

B. Obligor on Assistance

1. Payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent in accordance with rule or federal regulations.

2. The amount of the recoupment may be set through agreement or determined in accordance with federal regulations (7 CFR 273.18 or rule (R986-213-306).

ORS shall be responsible for reviewing all requests for Food Stamp retroactive benefits to determine if an offset is to be made. A determination of the amount due the recipient shall be made within five (5) days from the date the request is received by ORS.

KEY: child support, foster care, youth corrections, public assistance overpayments

December 17, 2003

Notice of Continuation October 24, 2007

62A-1-117

62A-11-104

62A-11-107

62A-11-111
 62A-11-301
 62A-11-320.5
 62A-11-320.6
 78A-6-1106
 78B-12-101
 78B-12-106
 78B-12-108
 78B-12-201 et seq.

R527. Human Services, Recovery Services.**R527-601. Establishing or Modifying an Administrative Award for Child Support.****R527-601-1. Documentation of Income.**

When complete documentation of current income as required by Section 78B-12-203 is not available for both parents in an administrative default, participation, or stipulation proceeding, the office shall use the best evidence available to determine the appropriate child support award, in accordance with Section 78B-12-201.

R527-601-2. Definition.

Best evidence available shall include the following: an affidavit from a cooperating parent concerning the income of a parent who is not cooperating in providing documentation of his/her income; historical records including old tax returns, pay stubs, employer statements, or Department of Workforce Services records; market rate earned by persons with the same occupation as reported by the Department of Workforce Services; or the federal minimum wage.

R527-601-3. Procedures.

Prior to using the best evidence available to establish or modify an administrative order, the office shall mail a copy of an affidavit describing the evidence to the last known address of the uncooperative parent against whom the evidence is being used.

KEY: child support**October 16, 1997****Notice of Continuation September 7, 2007****78B-12-201****78B-12-203**

R539. Human Services, Services for People with Disabilities.**R539-15. Time-Limited Respite Care Program.****R539-15-1. Purpose and Authority.**

- (1) The purpose of this rule is to provide:
 - (a) procedures and standards for the determination of eligibility for the Division's Time-Limited Respite Care Program for Persons on the Division's Waiting List as specified in R539-2-4.
- (2) This rule is authorized from July 1, 2008 to June 30, 2009 by Legislative appropriation and established under Section 62A-5-103.

R539-15-2. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101, and
- (2) "Person": Individual who meets eligibility requirements in Rule R539-1.
- (3) "Active Status": Has a current Needs Assessment Score on the Division wait list.
- (4) "Respite": A service to give relief to the Person's primary caregiver.

R539-15-3. Eligibility.

- (1) A Person is eligible for the Time-Limited Respite Care Program who meets the eligibility requirements listed in Rule 539-1, provided that:
 - (2) the Person is not receiving ongoing services with the Division,
 - (3) the Person is currently in active status on the Division waiting list.

R539-15-4. Limitations.

- (1) A Person who meets eligibility requirements for the Time-Limited Respite Care Program is limited to no more than \$1,000 for respite care services from July 1, 2008 to June 30, 2009.
- (2) Funds are granted for 12 months. After six months, the Person must report the expenditure of funds to the Division. The use of the respite care funds will be evaluated by the Division. If there is no plan to use the funds or funds are unused, those funds may be reallocated to another eligible Person.
- (3) Persons receiving ongoing services are not eligible for time-limited respite services.

R539-15-5. Priority.

- (1) As of July 1, 2008, the first 250 persons who are not brought into ongoing services and who remain on the Division waiting list will receive priority for respite care services. If any of the first 250 choose not to use time-limited respite care services, then Persons will be offered this service in the order of their position on the waiting list.

R539-15-6. Respite Care Services Providers.

- (1) Respite services may be provided by an employee of the Person or through an agency or program that provides respite care services.
- (2) If the Person elects to hire an employee, Division requirements for a background check must be met.
- (3) Payments to an employee must be made through a fiscal agent.

KEY: disabilities
August 21, 2008

62A-5-103

R590. Insurance, Administration.**R590-164. Uniform Health Billing Rule.****R590-164-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

R590-164-3. Applicability and Scope.

A. This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

B. Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

C. This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

D. This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

E. This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

A. Uniform Claim Forms are defined as:

(1)(a) "UB-92 HCFA-1450" means the health insurance claim form maintained by HCFA for use by institutional care providers. Currently this form is known as the UB92. This form will not be used after 01/01/2008.

(b) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(2)(a) "Form HCFA-1500 (12-90)" means the health insurance claim form maintained by HCFA for use by health care providers. This form will not be used after 06/01/2008.

(b) "Form CMS 1500 (08-05)" means the health insurance claim form maintained by NUCC for use by health care providers. This form will not be used after 06/01/2008.

(3) "American Dental Association, 1999 Version 2000" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(4) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

B. Uniform Claim Codes are defined as:

(1) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(2) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(3) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(4) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(a) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(b) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(5) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.

(6) "NDC" means the National Drug Codes of the Food and Drug Administration.

(7) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

C. "Electronic Data Interchange Standard" means the:

(1) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(2) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(3) as adopted by the commissioner by rule.

D. "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

E. "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

F. "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services. HCFA is no longer an active division of the Department of Health and Human Services.

G. "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

H. "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

I. "HIPAA" means the federal Health Insurance Portability and Accountability Act.

J. "NUBC" means the National Uniform Billing Committee.

K. "NUCC" means the National Uniform Claim Committee.

R590-164-5. Paper Claim Transactions.

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

R590-164-6. Electronic Data Interchange Transactions.

A. The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

B. Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

C. Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

D. The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at www.insurance.utah.gov/rules/index.htm.

(1) #1 - "Anesthesia v2.0." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers. Effective date: 07-12-2003.

(2) #2A - "UB92 Form Locator Elements v2.0." Purpose: to clearly describe the use of each form locator in the UB-92 (HCFA 1450) claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard creates a uniform billing method for institutional claims. Effective date: 07-12-2003.

(3) #2B - "HCFA 1500 Box Elements v2.0." Purpose: to clearly describe the standard use of each box (for print images) and its crosswalk to the HIPAA 837 004010X098A1 Professional implementation guide. This standard creates a uniform billing method for professional claims. Effective date: 07/12/03.

(4) #2D - "Dental Form Locator Elements v2.0." Purpose: to clearly describe the standard use of each Form Locator (for print images) and its crosswalk to the HIPAA 837 004010X097A1 Dental implementation guide. This standard creates a uniform billing method for dental claims. Effective date: 12/12/03.

(5) #3 - "837 Health Care Claim Standard v2.1." Purpose: to detail the standard transactions for the transmission of health care claims and encounters and associated transactions in the state of Utah. Effective date: 01/17/03.

(6) #4 - "Provider Remittance Advice v2.0." Purpose: to detail the standard transactions for the transmission of health care remittance advices in the state of Utah. Effective date: 01/17/03.

(7) #8 - "Patient Identification Number v2.0." Purpose: to describe the standard for the patient identification number in Utah. Effective date: 09/11/98.

(8) #9 - "Professional Common Edits v2.o". Purpose: to detail common edits used in all professional claims. Effective date: 10/17/97.

(9) #10 - "Facilities Common Edits v2.o". Purpose: to detail common edits used in all facility claims. Effective date: 9/10/99.

(10) #11 - "Medicaid Enrollment Standard v2.0." Purpose: to describe the standard for the transmission of a Medicaid enrollment transaction in the state of Utah. Effective date: 04/12/03.

(11) #12 - "HCFA Box 17 / 17A". Purpose: to establish a standard approach to reporting referring provider name and identifier number on the HCFA 1500 claim form. This Standard also provides the cross walk to the ASC X12 837 Professional Claim version 4010A. Effective date: 09/04/04.

(12) #18 - "Acknowledgements v2.3." Purpose: to detail the standard transaction for the reporting of transmission receipt and transaction and/or functional group X12 standard syntactical errors. This standard adopts the use of the ASC X12 997 transaction. Effective date: 07/08/06.

(13) #20 - "Front-End Acknowledgement Standard v2.2." Purpose: to delineate a standardized front-end encounter acknowledgement transaction. This transaction will be used only to report on the status of a claim/encounter at the level of the payers "front end" claim/encounter edits, i.e., before the payer is legally required to keep a history of the claim/encounter. Effective date: 12/02/05.

(14) #26 - "Telehealth v2.1." Purpose: to provide a uniform standard of billing for a health care claim/encounter delivered via telehealth. Two types of telehealth technology have been identified to deliver health care. Effective date: 9/13/03.

(15) #27 - "Metabolic and Dietary Foods v2.1." Purpose: to provide a uniform standard for billing of metabolic dietary products for those providers and payers that use the UB92 and the HCFA 1500 or the electronic equivalent. Effective date:

09/11/04.

(16) #28 - "Home Health v2.1." Purpose: to provide a uniform standard of billing for a home health care claim/encounter. Effective date: 06/12/04.

(17) #30 - "Pain Management v2.o". Purpose: to provide a uniform method of submitting a pain management claim/encounter, pre-authorization, and notification. Effective date: 10/19/02.

(18) #31 - "Eligibility Inquiry and Response Standard v2.3." Purpose: to detail the Standard transactions for the transmission of health care eligibility inquiries and responses in the state of Utah. Effective date: 06/02/07.

(19) #32 - "Benefits Enrollment and Maintenance Standard v2.1." Purpose: to mandate the use of the ASC X12 834 HIPAA addenda transaction for health care benefits enrollment and maintenance transactions. Effective date: 12/06/04.

(20) #34 - "Psychiatric Day Treatment Standard v2.0." Purpose: to provide a uniform standard for submitting a psychiatric day treatment claim/encounter, pre-authorization, and notification. Effective date: 10/09/02.

(21) #35 - "Prior Authorization/Referral Standard v2.0." Purpose: to (1) lay out general recommendations to payers and providers about handling the UHIN Internet based prior authorization/referral (termed the 278) system, (2) set out the minimum data set that providers will submit in the 278 request, and (3) set out the minimum data set that payers will return on the 278 response. Effective date: 10/08/02.

(22) #36 - "Claim Status Inquiry v2.2." Purpose: to detail the Standard transactions for the transmission of health care claim status inquiries and response in the state of Utah. Effective date: 07/08/06.

(23) #37 - "Individual Name v2.0." Purpose: to provide guidance for entering names into any Utah provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records. Effective Date: 07/12/03.

(24) #46 - "Required 'Unknown' Values v2.0." Purpose: to provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values are not to be used to replace known data. Effective Date: 06/12/04.

(25) #50 - "Coordination of Benefits v2.0." Purpose: to streamline the coordination of benefits process between payers and providers. The over all goal of this standard is to define the data to be exchanged for Coordination of Benefits (COB) and increase effective communications. Effective Date: 07/08/06.

(26) #51 - "National Provider Identifier v2.1." Purpose: to describe the agreed upon requirements surrounding the National Provider Identifier and its usage for providers and payers in the State of Utah during the transition period of May 23, 2005 through May 22, 2007. Effective Date: 09/01/2007.

(27) #56 - "CMS 1500 Paper Claim Form v2.2." Purpose: to clearly describe the use of each form locator in the CMS 1500 claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard applies to professional providers. Effective Date: 09/01/2007.

(28) #57 - "UB04 Paper Claim Form v2.0." The purpose of this standard is to describe the use of each form locator in the UB04 (CMS1450) claim billing form and its crosswalk to the HIPAA 004010X096A1 Institutional implementation guide. This standard applies to institutional providers. Effective Date: 04/07/2007.

R590-164-7. Separability.

If any provision of this rule or the 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 may not be affected.

R590-164-8. Enforcement Date.

The commissioner will begin enforcing the revised portions of this rule 45 days from the rule's effective date.

KEY: insurance law

August 26, 2008

31A-22-614.5

Notice of Continuation March 31, 2005

R590. Insurance, Administration.**R590-222. Viatical Settlements.****R590-222-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of viatical settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for requests for verification of coverage.

This rule applies to all viatical settlement providers and producers and to insurers whose policies are being viaticated.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at <http://www.insurance.utah.gov/ruleindex.html>:

(1) Appendix A, Utah Viatical Settlement Provider Application, dated 2007.

(2) Appendix B, Utah Viatical Settlement Provider Annual Report, dated 2007.

(3) Appendix C, NAIC Viatical Settlement brochure Selling Your Life Insurance Policy, dated 2004.

(5) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for viatication.

(2) "Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.

(3) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) Viatical Settlement Provider License.

(a) A person may not perform, or advertise any service as a viatical settlement provider in Utah, without a valid license.

(b) A viatical settlement provider license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website, see Appendix A;

(ii) provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over

the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that viatical settlement proceeds will be sent to the viator within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) provide the antifraud plan as required by Section 31A-36-117;

(iv) provide any other information requested by the commissioner; and

(v) provide evidence of financial responsibility in the amount of \$50,000 in the form of a surety bond issued by an authorized corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond, deposit or combination thereof, shall not be terminated without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a financial instrument, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the viatical settlement provider is licensed as a viatical settlement provider.

(d) The commissioner may refuse to issue or renew a license of a viatical settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a viatical settlement provider fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a viatical settlement provider has, at the time of license renewal, viatical settlements where the insured has not died, the viatical settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the viatical settlement provider properly assigns, sells, or otherwise transfers the viatical settlements where the insured has not died; or

(B) the date that the last insured covered by viatical settlement transaction has died;

(ii) designate, in writing, either the viatical settlement provider that entered into the viatical settlement or the producer who received commission from the viatical settlement, if applicable, or any other viatical settlement provider or producer licensed in this state, to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident viatical settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Viatical Settlement Producer license.

Viatical settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

R590-222-6. Annual Report.

(1) By March 1 of each calendar year, each viatical settlement provider licensed in this state shall submit a report to

the commissioner. Such report shall be limited to all viatical settlement transactions where the viator is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each viatical settlement contracted during the reporting period:

- (a) a coded identifier;
- (b) policy issue date;
- (c) date of the viatical settlement;
- (d) net death benefit viaticated;
- (e) amount available to the policyholder under the terms of the policy at the time of the settlement; and
- (f) net amount paid to viator.

R590-222-7. Payment Requirements.

(1) Payment of the proceeds of a viatical settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

(2) Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance insurer or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the viatical settlement by the viatical settlement provider or escrow agent, is not permissible without written consent of the viator.

R590-222-8. Disclosures.

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time the application for the viatical settlement, shall be provided in a separate document that is signed by the viator and the viatical settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a viatical settlement, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the viatical settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The viator has the right to terminate a viatical settlement within 15 calendar days after the receipt of the viatical settlement proceeds by the viator as provided by Subsection 31A-36-109(7). If the insured dies during the 15 day period, the settlement is terminated, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

(f) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a viatical settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(h) Disclosure to a viator shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Viatical Settlement brochure, dated 2004, that describes

the process of viatical settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) The insured may be contacted by either the viatical settlement provider or producer or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement or in a separate document signed by the viator and the viatical settlement provider or producer, and provide the following information:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

(b) The document shall include the name, business address and telephone number of the viatical settlement provider.

(c) A viatical settlement producer shall disclose to a prospective viator the existence and source of the producer's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement producer for the placement of a policy.

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(e) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the interest in those benefits.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The viatical settlement provider is responsible for assuring that the net proceeds from the viatical settlement exceed the benefits that are available at the time of the viatical settlement under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose

policies are being viaticated, shall respond to a request for verification of coverage from a viatical settlement provider or producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Individual Life Insurance Policies, dated 2004, which has been completed by the viatical settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the viatical settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being viaticated may not charge a fee for responding to a request for information from a viatical settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being viaticated shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of viatical settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a viatical settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or

use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the provider of viatical settlements or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a viatical settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a viatical settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement producers, viatical settlement investment agents, anyone who may recommend a viatical settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement, products or services, and if any specific viatical settlement is advertised, the viatical settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the viatical settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears,

provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any viatical settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any viatical settlement;

(c) any viatical settlement; or

(d) any life insurance policy or life insurance insurer.

(18) If the advertisement emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(19) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of viatical settlements under Title 31A, Chapter 36, that knows or has reasonable cause to believe that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A viatical settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A viatical settlement provider shall not also act as a viatical settlement producer in the same viatical settlement,

whether entitled to collect a fee directly or indirectly.

(3) A viatical settlement producer shall not seek or obtain any compensation from the viator without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement.

(4) A viatical settlement provider or producer shall not unfairly discriminate in the making or soliciting of viatical settlements, or discriminate between viators with dependents and without dependents.

(5) A viatical settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement producer, with respect to the viatical settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a viatical settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the viatical settlement, disclosure to the viator, notice of intent to viaticate, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to life.uid@utah.gov.

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised document.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

R590-222-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 30 days from the rule's effective date.

R590-222-16. Penalties.

A person found, after an administrative proceeding, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-222-17. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be 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, viatical
August 4, 2008**

31A-2-201

Notice of Continuation June 2, 2008

31A-36-119

R590. Insurance, Administration.**R590-238. Captive Insurance Companies.****R590-238-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of two of its executive officers and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report may be filed electronically consistent with directions from the commissioner.

(2) An association captive insurance company, a sponsored captive insurance company, and an industrial insured captive insurance company shall observe the requirements of Section 31A-4-113 when they file an annual report on its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies, except those noted in Subsection R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) The Report of the Financial Condition shall include a statement of a qualified Actuary entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing

standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that

the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as an captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company

he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition of Control of or Merger with Domestic Company.

The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103, notwithstanding the Commissioner may waive or modify the requirements for public notice and hearing when the Commissioner concludes the public hearing is not necessary due to limited public interest in the change of control.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed;

(b) the company has ceased to carry on insurance business in or from within Utah;

(c) at the request of the company; or

(d) any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

R590-238-18. Change of Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance using the form, "Application to Form a Captive Insurance Company."

(2) Two complete copies of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, accompanied by the appropriate filing fee, shall be filed in writing or online with the commissioner. A written application, including all required attachments and information, may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator.

(3) At least one of the copies of the application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business;

determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-7 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-7.

(3) Each company shall pay an annual nonrefundable e-commerce and internet technology services fee each year in the amount established in the department's fee rule, R590-102-14(1)(b) to the commissioner.

(4) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801)537-9174 or (801)537-9047:

(a) "Application to Form A Captive Insurance Company;"

(b) "Biographical Affidavit For Captive Insurance Company;"

(c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"

(e) "Utah Approved Irrevocable Letter of Credit;"

(f) "Statement if Economic Benefit to the State of Utah;"

and

(g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

(a) "Application for Placement on Approved Captive Insurer Management Firm List;"

(b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;"

and

(c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, www.captive.utah.gov/licensing.html.

R590-238-22. 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 this rule and its application to other persons and circumstances are not effected.

**KEY: captive insurance
August 25, 2008**

**31A-2-201
31A-37-106**

R590. Insurance, Administration.**R590-250. PEO Assurance Organization Designation.****R590-250-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-40-303(2) wherein the commissioner is given authority to designate by rule one or more assurance organizations for certifying the qualifications of a professional employer organization.

R590-250-2. Purpose and Scope.

(1) The purpose of this rule is to establish a process by which an assurance organization can be designated for certifying the qualifications of a professional provider organization.

(2) This rule applies to any assurance organization certifying the qualifications of a professional employer organization with operations in Utah.

R590-250-3. Designation Process.

(1) An assurance organization desiring to be designated by the commissioner to certify professional employer organizations in Utah shall:

(a) apply by letter requesting designation by the commissioner;

(b) include in the letter or as an attachment to the letter:

(i) an explanation of how the assurance organization will certify each of the qualification criteria listed in Section 31A-40-303 (3); and

(ii) evidence that the assurance organization is licensed by one or more states to certify the qualifications of a professional employer organization.

(2) The commissioner will designate approved assurance organizations by rule.

R590-250-4. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-250-5. 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 this rule and its application to other persons and circumstances are not affected.

KEY: insurance, assurance organization designation

August 25, 2008

31A-40-303(3)

R590. Insurance, Administration.**R590-251. Preneed Life Insurance Minimum Standards For Determining Reserve Liabilities And Nonforfeiture Values Rule.****R590-251-1. Authority.**

This rule is promulgated by the commissioner of insurance pursuant to Subsections 31A-2-201(3), 31A-17-402(1), and 31A-22-408(11).

R590-251-2. Purpose and Scope.

(1) The purposes of this rule for preneed life insurance products are to:

- (a) establish minimum mortality standards for reserves and non-forfeiture values; and
- (b) require the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Table for use in determining:
 - (i) reserve liabilities; and
 - (ii) nonforfeiture values.

(2) This rule applies to preneed insurance contracts, as defined in Section R590-251-3, and to similar policies and certificates as determined by the commissioner.

R590-251-3. Definitions.

In addition to the definitions in 31A-1-301 the following definitions shall apply for the purposes of this rule.

(1)(a) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002.

(b) The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002.

(c) Unless the context indicates otherwise, the 2001 CSO Mortality Table includes:

- (i) the ultimate form of that table;
- (ii) the select and ultimate form of that table;
- (iii) the smoker and nonsmoker mortality tables; and
- (iv) the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year (10-year) selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

(3) Preneed insurance contract means any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured.

(a) Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased.

(b) The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

(4) The tables identified in Subsections R590-251-3(1) and R590-251-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

R590-251-4. Minimum Standards.

This section sets minimum standards for determining reserve liabilities and nonforfeiture values for policies subject to the rule.

(1) Mortality. The mortality used in determining the minimum standard for valuation and the minimum standard for nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

(2) Interest rates.

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in 31A-17-506.

(b) The interest rates used in determining the minimum standard for nonforfeiture values shall be the calendar year statutory nonforfeiture interest rates as defined in 31A-22-408.

(3) Methods.

(a) The method used in determining the minimum standard for valuation shall be the method defined in 31A-17, Part 5, Standard Valuation Law.

(b) The method used in determining the minimum standard for nonforfeiture values shall be the method defined in 31A-22-408.

R590-251-5. Transition Rules.

(1) For policies subject to this rule issued before January 1, 2012, the 2001 CSO may be used as the minimum mortality standard for valuation and minimum mortality standard for nonforfeiture values for both male and female insureds.

(2) If an insurer elects to use the 2001 CSO as a minimum mortality standard for any policy subject to this rule issued before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

(a) A complete list of all policy forms that use the 2001 CSO as a minimum mortality standard;

(b) A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserve liabilities for the policies subject to this rule and using the 2001 CSO as a minimum mortality standard, develops adequate reserves; and

(c) Supporting information regarding the adequacy of reserves for policies subject to this rule and using the 2001 CSO as a minimum mortality standard for reserve liabilities.

(3) For the purpose of the certification required under Subsection R590-251-5(2)(b), the policies subject to this rule and using the 2001 CSO as a minimum mortality standard cannot be aggregated with any other policies.

(4) Policies subject to this rule issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum reserve liabilities and minimum nonforfeiture values.

R590-251-6. Effective Date.

This rule applies to policies issued on or after January 1, 2009.

R590-251-7. 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 31A-2-308.

R590-251-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-251-9. 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 this rule and its application to other persons and circumstances are not affected.

**KEY: preneed life insurance standards
August 25, 2008**

31A-2-201

31A-17-402
31A-22-408

R595. Judicial Conduct Commission, Administration.**R595-3. Procedure.****R595-3-1. Proof.**

Formal charges shall be established by a preponderance of the evidence.

R595-3-2. Applicability of Other Rules.

Except as otherwise provided in Commission rule, the Utah Rules of Evidence apply in all proceedings. Except as otherwise provided in Commission rule, the Utah Rules of Civil Procedure do not apply in Commission proceedings.

R595-3-3. Right to Counsel.

A judge shall be entitled to retain and have the assistance of counsel at every stage of the proceedings.

R595-3-4. Service.

Service of a formal complaint shall be made by personal service or certified mail upon the judge or judge's counsel. Service of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-3-5. Subpoena Power.

The issuance and service of subpoenas for Commission proceedings is governed by Section 78A-11-113 of the Utah Code.

R595-3-6. Effect of Judge's Resignation or Retirement during Proceedings.

If a judge resigns or retires during the proceedings, the Commission shall determine whether to proceed or dismiss the proceedings.

R595-3-7. Investigation.**A. Preliminary Investigation.**

1. The executive director shall review all written complaints, and shall, regardless of whether the allegations contained therein would constitute misconduct or disability if true, conduct a preliminary investigation.

2. When any other complaint is received, the executive director shall summarize and submit the complaint in writing to the Commission, but shall not conduct a preliminary investigation unless authorized to do so by the Commission.

3. The scope of the preliminary investigation shall be determined by Commission rule and the assigned investigator, subject to the direction of the executive director.

4. Upon completion of the preliminary investigation, the investigator shall recommend a full investigation if there is reasonable cause to support a finding of misconduct or disability. In all other cases, the investigator shall recommend that the proceedings be dismissed.

B. Full Investigation. Within ten days after a full investigation is authorized by the Commission, the executive director shall notify the judge that a full investigation has been authorized. The notice shall:

1. inform the judge of the allegations being investigated and the canons or statutory provisions allegedly violated;

2. inform the judge that the investigation may be expanded if appropriate;

3. invite the judge to respond to the allegations in writing within 20 days; and

4. include a copy of the complaint, the preliminary investigation report(s), and any and all other documentation reviewed by the Commission in determining whether to authorize a full investigation.

R595-3-8. Formal Charges.

The Commission may, upon reasonable cause to support a finding of misconduct or disability, direct the executive director

to file a formal complaint. The formal complaint shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal complaint with the Commission, cause a copy to be served upon the judge or judge's counsel, and file proof of service with the Commission.

R595-3-9. Pre-Hearing Procedures.

A. Answer. Within 20 days after service, the judge may file an answer to the formal complaint.

B. Scheduling of Confidential Hearing. After receipt of the judge's answer or after expiration of the time to answer, the hearing panel or masters shall schedule a confidential hearing and notify the judge of the date, time, and place of the confidential hearing.

C. Witnesses and Exhibits. Not later than 20 days before the confidential hearing, the examiner and the judge shall confer and attempt to agree upon uncontroverted and refuted facts and uncontested and contested issues of law; and exchange all proposed exhibits and a list of all potential witnesses.

D. Exculpatory Evidence. The examiner shall provide the judge with exculpatory evidence relevant to the formal charges.

E. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

F. Failure to Disclose. The hearing panel chair or presiding master may preclude either party from calling a witness at the confidential hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

R595-3-10. Discipline by Consent.

At any time after the filing of formal charges and before final disposition by the Commission, the judge may, with the consent of the examiner, admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission for action.

R595-3-11. Confidential Hearing.

A. Authority of Hearing Panel Chair or Presiding Master. The hearing panel chair or presiding master shall rule on all motions and objections raised at the confidential hearing, may limit the time allowed for the presentation of evidence and arguments, may bifurcate any and all issues to be presented, and may make any and all other rulings regarding the procedure not contrary to statute or Commission rule.

B. Hearing Procedures.

1. All testimony shall be under oath.

2. The examiner and the judge shall be permitted to present evidence and produce and cross-examine witnesses, present rebuttal evidence and produce and cross-examine rebuttal witnesses, and summarize the evidence and legal issues.

3. Confidential hearings shall be recorded by a certified court reporter or other means used or allowed by courts of record in this state.

4. Panel hearing members or masters may ask questions of any witness or the judge.

5. Immediately following the conclusion of the evidence and arguments, the hearing panel or masters shall deliberate and make a decision. Any such decision shall require a majority of the hearing panel or masters participating in the confidential hearing.

C. Post-Hearing Procedures if the Decision is to Dismiss the Formal Charges. The hearing panel chair or presiding master shall prepare and sign an order of dismissal, and shall serve the same upon the judge.

D. Post-Hearing Procedures if the Decision is to Impose any Level of Sanction or Involuntary Retirement.

1. Within 60 days from the conclusion of deliberations:
 - a. the hearing panel chair or presiding master shall prepare a memorandum decision, which must be approved by a majority of the hearing panel or masters participating in the confidential hearing, then signed by the hearing panel chair or presiding master and served on the examiner and the judge;
 - b. The examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision; and
 - c. The findings of fact, conclusions of law, and order shall be approved and signed by the hearing panel chair or presiding master, and served on the judge.
2. The judge shall have ten days, after service of the findings of fact, conclusions of law, and order, to lodge any objections with the Commission. If no objections are lodged, the executive director shall submit the record to the Supreme Court upon the expiration of the objection period. If objections are lodged, the Commission may either resolve the objections or refer them to the Supreme Court without resolution, along with the record.
3. A copy of the record shall be provided to the judge at no cost.

R595-3-12. Amendments to Formal Complaint or Answer.

At any time before the hearing panel chair or presiding master signs the findings of fact, conclusions of law, and order, the formal complaint or answer may be amended to conform to the proof or to allege additional facts. If the formal complaint is amended, the judge shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-3-13. Reinstatement of Proceedings after Dismissal.

A. Reinstatement upon Request by Complainant.

1. If the Commission dismisses the proceedings at any time prior to the commencement of a confidential hearing, the complainant may, within 30 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.
 2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.
 3. A determination not to reinstate the proceedings is not appealable.
- B. Reinstatement upon Request by Executive Director.**
1. If the Commission dismisses the proceedings at any time prior to the filing of formal charges, the executive director may, at any time upon the receipt of newly discovered evidence, request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.
 2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

R595-3-14. Proceedings Involving Allegations of Mental or Physical Disability.

A. Initiation of Disability Proceeding. A disability proceeding may be initiated: by written complaint; by a claim of inability to defend in a disciplinary proceeding; by an order of involuntary commitment or adjudication of incompetency; or upon authorization by the Commission upon the receipt of an unwritten complaint as provided in statute or Commission rule.

B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with Commission rule, except:

1. the purpose of disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions; and
2. all of the proceedings shall be confidential.

KEY: judicial conduct commission

February 1, 2005

**Art. VIII, Sec. 13
78A-11-102 through 78A-11-113**

R612. Labor Commission, Industrial Accidents.**R612-11. Prohibition of Direct Payments by Insured Employer.****R612-11-1. Authority.**

This rule is enacted under the authority of U.C.A. Sections 34A-1-104, 34A-2-201.3, and 63G-4-202(1) and is applicable to proceedings under section 34A-2-201.3 to assess a penalty for direct payment of workers' compensation benefits by an insured employer.

R612-11-2. Designation as Informal Proceedings.

Initial proceedings to assess such penalty are hereby designated as informal adjudicatory proceedings, while all subsequent proceedings with respect to assessment of such penalty are hereby designated as formal proceedings.

KEY: workers' compensation, administrative procedures, reporting, settlements
August 11, 2008

34A-2-101 et seq.

34A-3-101 et seq.

34A-1-104

78B-8-402

78B-8-404

R612. Labor Commission, Industrial Accidents.

R612-12. Reporting Requirements for Workers' Compensation Coverage Waivers.

R612-12-1. Authority.

This rule is enacted under the authority of U.C.A. Sections 34A-1-104, 31A-22-1011, and 63G-3.

R612-12-2. Designation as Informal Proceedings.

Insurance carriers issuing a waiver pursuant to Section 31A-22-1011 shall file with the Labor Commission a report, as required by this section, once monthly but in any event no later than the 5th of each month or the first business day thereafter.

KEY: workers' compensation, administrative procedures, reporting, settlements

August 11, 2008

34A-2-101 et seq.

34A-3-101 et seq.

34A-1-104

78B-8-402

78B-8-404

R622. Lieutenant Governor, Administration.**R622-1. Adjudicative Proceedings.****R622-1-1. Purpose.**

A. This rule provides the informal adjudicative procedures for submission, review, and disposition of petitions for agency declaratory rulings on the applicability of statutes, rules, and orders governing or issued by the agency governing:

1. Appeal and review of a decision by the Lieutenant Governor's Office regarding elections, certifications, lobby licensing, filing of documents.

B. The informal procedures of this rule apply to all other agency actions for which an adjudicative proceeding may be required.

R622-1-2. Authority.

This rule is required by Chapter 46b of Title 63, the Utah Administrative Procedures Act, and is enacted under the authority of 63-46a-10(12).

R622-1-3. Definitions.

A. The terms used in this rule are defined in Section 63-46b-2, except "agency" means Office of the Lieutenant Governor.

B. In addition:

1. "order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons;

2. "declaratory ruling" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order; and

3. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

R622-1-4. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the head of the agency.

C. The agency shall stamp the petition with the date of receipt.

R622-1-5. Petition Form.

The petition shall:

1. be clearly designated as a request for an agency declaratory ruling;

2. identify the statute, rule, or order to be reviewed;

3. describe in detail the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular work days; and

6. be signed by the petitioner.

R622-1-6. Petition Review and Disposition.

A. Petition Review

The agency head or designee shall promptly review and consider the petition and may:

1. meet with the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take any action, consistent with law, that the agency, in its judgment, deems necessary to provide the petitioner adequate review and due consideration.

B. Decision of Agency

The agency shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of

progress in preparing the ruling, within 30 days of receipt of the petition.

C. Filing of Ruling

The agency shall retain the petition and a copy of the declaratory ruling in its records.

R622-1-7. Nature of Proceeding.

A. Any proceeding conducted by the agency shall be conducted as an informal adjudicative proceeding, as provided for in Section 63-46b-4-5. The agency head shall designate the presiding officer of the adjudicative proceeding and shall disclose that designation in the notice of adjudicative proceeding.

B. Notice

Not less than 20 days prior to any proposed agency action, the agency shall file and serve notice of the adjudicative proceeding upon the affected party, which notice shall be in writing, shall designate the presiding officer, shall be signed by the agency head and otherwise shall be prepared in accordance with the requirements of Section 63-46b-3.

C. Procedure

1. No hearing shall be held unless the affected party requests a hearing in writing not more than ten days after the service of the notice of adjudicative proceeding.

2. If a hearing is requested by the affected party, affected party shall be permitted to testify, present evidence and comment on the proposed agency action. Prior to the hearing, the affected party shall have access to information contained in the agency's files relevant to the adjudicative proceeding but discovery is prohibited and the agency may not issue subpoenas or other discovery orders.

3. All informal adjudicative proceedings shall be open to all parties.

KEY: administrative procedures, enforcement (administrative) 1988

Notice of Continuation September 15, 2008

63-46b-1 et al.

67-1a-1 et al.

R628. Money Management Council, Administration.**R628-18. Conditions and Procedures for Use of Interest Rate Contracts.****R628-18-1. Authority.**

This rule is issued pursuant to Section 51-7-18(2)(b)(viii).

R628-18-2. Purpose.

The purpose of this rule is to establish conditions and procedures for the use by public entities of Contracts (as defined in R628-18-3). This rule does not cover instruments such as futures, options, (other than options to enter into swaps), calls or puts entered into for investment purposes, as they are not legal investments under the Act. This rule provides criteria for the use of Contracts, permitted contract terms and the type of contract form to be used. This rule also provides credit criteria for depository institutions, broker dealers, insurance companies and other entities that are counterparties to Contracts, reporting requirements on Contracts and penalties for violation of this rule.

R628-18-3. Definitions.

For purposes of this rule:

(1) Contract(s) means: interest rate exchange or swap contracts, cash flow exchange or swap contracts, any derivatives of these contracts including forward swaps and options to enter into swaps, and interest rate floors, caps and collars that are entered into by a public entity.

(2) Counterparty means: any party to a Contract who has obligations or rights thereunder.

(3) Governing Board means: the board, town council, city council, etc. of a public entity which would oversee the issuing of debt and the management of that debt.

(4) Intermediary Contract means: A Contract that is structured such that any payment owed by any counterparty to any other counterparty is to be made through a person or entity that is not a counterparty to the Contract, where the funds constituting such payment are either, (i) subject to the control of such person or entity; or (ii) subject to execution by the creditors of such person or entity.

(5) Intermediary means: a person or entity that is not a counterparty to a given Intermediary Contract through whom any payment is to be made by a counterparty to any other counterparty as contemplated under the immediately preceding subsection (4).

(6) Notional Amount means: the dollar amount against which a rate is applied to determine the dollar amount payable or receivable by a counterparty under a Contract.

R628-18-4. General Requirements.

Contracts shall be entered into only under the following conditions:

(1) The Governing Board shall first determine that the Contract or arrangement or a program of Contracts: (a) is designed to reduce the amount or duration of payment, rate, spread or similar risk, or (b) is reasonably anticipated to result in a lower cost of borrowing.

(2) Contracts are to be used for the control or management of debt or the cost of servicing debt and not for speculation.

R628-18-5. Credit Criteria Restriction on Counterparties.

Public entities may enter into contracts only with the following counterparties:

(1) Any in-state depository institution that meets the criteria of a qualified depository as described in Sections 51-7-3(28), 51-7-18.1 and R628-12.

(2) Any out-of-state depository institution that meets the criteria of R628-10.

(3) Any broker dealer that: (i) is either a primary reporting dealer recognized by the Federal Reserve Bank of New York or

meets the criteria of R628-16-6(B)(5) and (6), without regard to whether the broker dealer has applied for certification or been certified as contemplated under R628-16, and (ii) is rated, or whose parent company is rated, in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20).

(4) Any insurance company whose claims paying ability is rated or that has issued currently outstanding debt that is rated in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20).

(5) Any entity that is directly or indirectly wholly owned by an entity or entities described in any of the immediately preceding subsections (1) through (4).

(6) Any entity that is directly or indirectly wholly owned by a holding company or parent company which directly or indirectly wholly owns any entity described in the immediately preceding subsections (1) through (4).

(7) Any entity in the business of entering into Contracts that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection (7), the Contract's final maturity may not exceed eighteen years if the counterparty is not rated in the highest rating category for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty is not rated in one of the two highest rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

(8) Any entity whose obligations under the Contract with the public entity are fully and unconditionally guaranteed by an entity that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Subsection 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection (8), the Contract's final maturity may not exceed eighteen years if the counterparty's guarantor is not rated in the highest rating category for two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty's guarantor is not rated in one of the highest two rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

R628-18-6. Authorized Intermediaries.

A public entity shall not enter into an Intermediary Contract unless each Intermediary thereunder is either:

(1) a qualified depository as defined in Subsection 51-7-3(28);

(2) a permitted depository as defined in Subsection 51-7-3(24); or

(3) a certified dealer as defined in Subsection 51-7-3(2).

R628-18-7. Terms of the Contract and Type of Contract.

(1) To eliminate speculation, the Notional Amount of a Contract cannot exceed 115 percent of the par amount of the debt to which such Contract relates. Nothing in these rules shall be deemed to prohibit a public entity from entering into a subsequent Contract to reverse a position taken in a prior Contract so long as the subsequent Contract otherwise complies with these rules.

(2) The final termination date of a Contract shall not be later than 90 days past the final maturity of the debt to which

such Contract relates.

(3) The public entity must use an industry standard contract form approved by the International Swaps and Derivatives Association, Inc., (ISDA), which is currently headquartered in New York City, New York (ISDA), but may make such modifications thereto as are contemplated or permitted by the ISDA form or any ISDA code incorporated therein.

R628-18-8. Reporting Requirements and Penalty for Violation by a Public Treasurer.

(1) Pursuant to Subsection 51-7-18.2(2)(d), the public treasurer of each public entity that is a party to any outstanding Contract must submit a report to the council within 30 days after June 30 and December 31 of each year containing the following information as of the immediately preceding June 30 or December 31, as applicable:

- (a) A listing of all outstanding Contracts to which the public entity is a party;
- (b) the Notional amount of each Contract, if applicable;
- (c) the underlying debt to which each Contract relates;
- (d) the type of each Contract e.g., interest rate exchange or swap contract, cash flow exchange or swap contract or, if the Contract is a derivative of the foregoing, forward swap, option to enter into a swap, floor, cap, collar, or other derivative; and
- (e) a description of the basis upon which the public entity's payment obligations are determined under each Contract.

(2) Any public entity that willfully violates the provisions of this rule is guilty of a Class A misdemeanor.

(3) Any public entity that knowingly makes or causes to be made a false statement or report to the council is guilty of a Class A misdemeanor.

**KEY: interest rate swaps, contracts, public finance, bonds
July 3, 1995 51-7-18(2)(b)(viii)
Notice of Continuation November 6, 2007**

R651. Natural Resources, Parks and Recreation.

R651-611. Fee Schedule.

R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. \$75.00 Multiple Park Permit (good for all parks)
2. \$35.00 Senior Multiple Park Permit (good for all parks)
3. \$200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a \$10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

5. \$25 Pedestrian/Cyclist Permit (good at all parks)

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$2.00 per person, (\$1.00 for seniors) for pedestrians or bicycles at the following park:

TABLE 1

Dead Horse Point

2. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$5.00 per person, (\$3.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Deer Creek Jordanelle - Hailstone
Willard Bay

3. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$4.00 per person, (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 3

Sand Hollow

4. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$5.00 per person (\$3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 4

Utah Lake

5. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 5

East Canyon Rockport

6. \$8.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 6

Bear Lake Marina Bear Lake - Rendevous
Quail Creek

7. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 7

Jordanelle - Rockcliff Yuba

8. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 8

Goblin Valley Red Fleet
Scofield Starvation
Steinaker

9. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 9

Coral Pink Hyrum
Kodachrome Palisade

10. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$2.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following park:

TABLE 10

Antelope Island

11. \$2.00 (\$1.00 for seniors) per private vehicle at the following park:

TABLE 11

Great Salt Lake

12. \$6.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and \$3.00 for seniors at Utah Field House State Park.

13. \$5.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively).

TABLE 12

Edge of the Cedars

14. \$2.00 per person (\$1.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 13

Camp Floyd Territorial

15. \$4.00 per person (\$2.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 14

Anasazi

16. \$3.00 per person (\$1.50 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 15

Fremont Iron Mission

17. \$5.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

18. \$15.00 per OHV rider at the Jordan River OHV Center.

19. \$2.00 per person for commercial groups or vehicles with nine (9) or more occupants (\$15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. \$2.00 per person, age six (6) and over, for sites with basic facilities. Minimum cost for Group Day Use for the following parks:

TABLE 16

1. Fixed (flat) rate:	
Bear Lake - East Side	\$ 75.00
Bear Lake - Big Creek	\$ 75.00
Bear Lake - Willow	\$ 75.00
Bear Lake Marina	\$ 75.00
Camp Floyd Day Use Pavilion	\$ 30.00
Deer Creek Island	\$100.00
Deer Creek - Sailboat	\$100.00
Deer Creek - Peterson	\$100.00
Deer Creek - Rainbow	\$200.00
Deer Creek - Wallsburg	\$300.00
East Canyon - Small	\$100.00
East Canyon - Medium	\$175.00
Fremont	\$ 70.00
Hyrum	\$150.00
Jordanelle - Hailstone Cabanas	\$ 20.00
Jordanelle - Beach	\$175.00
Jordanelle - Cove	\$175.00
Jordanelle - Keatley	\$175.00
Jordanelle - Rock Cliff North	\$175.00
Jordanelle - Rock Cliff South	\$175.00
Otter Creek -	\$100.00
Rockport - Crandalls	\$100.00
Rockport - Highland	\$100.00
Rockport - Lariat Loop	\$100.00
Rockport - Old Church	\$250.00

Snow Canyon - Galoot Day Use	\$ 75.00
Starvation - Mountain View	\$150.00
Steinaker -	\$150.00
Wasatch - Cottonwood	\$175.00
Wasatch - Oak Hollow	\$175.00
Wasatch - Soldier Hollow	\$175.00
Willard - Eagle Beach (150 max)	\$200.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba Lake - Group Day Use Area	\$ 75.00

2. \$3.00 per person and \$2.00 per vehicle at Antelope Island State Park.

3. \$2 per person with a minimum fee of \$50 at Huntington, Millsite and Palisade state parks.

E. Antelope Island Wildlife Management Program: A \$1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. \$10.00 with pit or vault toilets; \$13.00 with flush toilets; \$16.00 with flush toilets and showers or electrical hookups; \$20.00 with flush toilets, showers and electrical hookups; \$25.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a \$2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. The following fees will apply to Overnight Group Camping:

TABLE 17

1. Reservation Fee: \$10.65 at the following parks:

Bear Lake - Eastside -	\$ 75.00
Bear Lake - Big Creek -	\$ 75.00
Bear Lake - Willow -	\$ 75.00
Bear Lake Marina -	\$ 75.00
Deer Creek - Wallsburg -	\$400.00
East Canyon - Large Springs -	\$ 50.00
East Canyon - Mormon Flats -	\$ 75.00
East Canyon - New -	\$200.00
Escalante Group Area -	\$ 50.00
Fremont - Group Area -	\$ 70.00
Hyrum -	\$150.00
Jordanelle - Beach	\$250.00
Jordanelle - Cover	\$250.00
Jordanelle - Keatley	\$250.00
Jordanelle - Rock Cliff North	\$250.00
Jordanelle - Rock Cliff South	\$250.00
Kodachrome - Arches -	\$ 65.00
Kodachrome - Oasis -	\$ 65.00

Otter Creek -	\$100.00
Rockport - Hawthorne	\$150.00
Rockport - Riverside	\$150.00
Rockport - Old Church	\$150.00
Snow Canyon - Quail Group Area	\$ 65.00
Steinaker -	\$200.00
Wasatch - Soldier Hollow Chalet	\$250.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba - Painted Rocks	\$100.00
Yuba - Oasis	\$100.00

2. \$3.00 per person at Dead Horse (minimum - \$45.00)
3. \$3.00 per person at Goblin Valley, Green River No.1 and No. 2, Starvation, Palisade and Scofield (minimum) - \$75.00
4. \$3.00 per person and \$2 per vehicle. Antelope Island (minimum) \$60.00

R651-611-4. Special Fees.

- A. Golf Course Fees
 1. Palisade rental and green fees.
 - a. Nine holes general public - weekends and holidays - \$13.00
 - b. Nine holes weekdays (except holidays) - \$11.00
 - c. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
 - d. 20 round card pass - \$180.00
 - e. 20 round card pass (Jr only) - \$125.00
 - f. Promotional pass - single person (any day) - \$500.00
 - g. Promotional pass - single person (weekdays only) - \$350.00
 - h. Promotional pass - couples (any day) - \$700.00
 - i. Promotional pass - family (any day) - \$900.00
 - j. Promotional pass - annual youth pass - \$150.00
 - k. Companion fee - walking, non -player - \$4.00
 - l. Motorized cart (18 holes) - \$10.00
 - m. Motorized cart (9 holes) - \$5.00
 - n. Pull carts (9 holes) - \$2.00
 - o. Club rental (9 holes) - \$5.00
 - p. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.
 - q. Driving range - small bucket - \$2.50
 - r. Driving range - large bucket - \$3.50
 2. Wasatch Mountain and Soldier Hollow rental and green fees.
 - a. Nine holes general public - \$13.50
 - b. Nine holes general public (weekends and holidays) - \$13.50
 - c. Nine holes Jr/Sr weekdays (except holidays) - \$11.00
 - d. 20 round card pass - \$220.00 - no holidays or weekends
 - e. Annual Promotional Pass (except holidays) - \$1,000.00
 - f. Business Class Membership Pass - \$1,000.00
 - g. Companion fee - walking, non-player - \$4.00
 - h. Motorized cart (9 holes - mandatory on Mt. course) - \$13.00
 - i. Motorized cart (9 holes single rider) - \$6.50
 - j. Pull carts (9 holes) - \$2.25
 - k. Club rental (9 holes) - \$6.00
 - l. School teams - No fee for practice rounds with coach and team roster (Wasatch County only). Tournaments are \$3.00 per player.
 - m. Tournament fee (per player) - \$5.00
 - n. Driving range - small bucket - \$2.50
 - o. Driving range - large bucket - \$5.00
 - p. Advance tee time booking surcharge - \$15.00
 - q. Gift Certificate Fee (Per Player) - \$5.00
3. Green River rental and green fees.
 - a. Nine holes general public - \$10.00
 - b. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
 - c. Eighteen holes general public - \$16.00
 - d. 20 round card pass - \$160.00
 - e. Promotional pass - single person (any day)- \$375.00
 - f. Promotional pass - personal golf cart - \$350.00

- g. Promotional pass - single person (Jr/Sr weekdays)- \$275.00
 - h. Promotional pass - couple (any day) - \$600.00
 - i. Promotional pass - family (any day) - \$750.00
 - j. Promotional pass - annual youth pass - \$150.00
 - k. Companion fee - walking, non-player - \$4.00
 - l. Motorized cart (9 holes) - \$10.00
 - m. Motorized cart (9 holes single rider) - \$5.00
 - n. Pull carts (9 holes) - \$2.25
 - o. Club rental (9 holes) - \$5.00
 - p. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.
 4. Golf course hours are daylight to dark
 5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
 6. Jr golfers are 17 years and under. Sr golfers are 62 and older.
 - B. Boat Mooring and Dry Storage
 1. Mooring Fees:
 - a. Day Use - \$5.00
 - b. Overnight Boat Parking - \$7.00 (until 8:00 a.m.)
 - c. Overnight Boat Camping - \$15.00 (until 2:00 p.m.)
 - d. Monthly - \$4.00/ft.
 - e. Monthly with Utilities - (Bear Lake and Jordanelle - Hailstone) \$7.00/ft.
 - f. Monthly with Utilities - (Other Parks) \$5.00/ft.
 - g. Monthly Off Season - \$3.00/ft
 - h. Monthly (Off Season with utilities) - \$4.00/ft
 2. Dry Storage Fees:
 - a. Overnight (until 2:00 p.m.) - \$5.00
 - b. Monthly During Season - \$75.00
 - c. Monthly Off Season - \$50.00
 - d. Monthly (unsecured) - \$25.00
 - C. Application Fees - Non - refundable PLUS Negotiated Costs.
 1. Grazing Permit - \$20.00
 2. Easement - \$250.00
 3. Construction/Maintenance - \$50.00
 4. Special Use Permit - \$50.00
 5. Waiting List - \$10.00
 - D. Assessment and Assignment Fees.
 1. Duplicate Document - \$10.00
 2. Contract Assignment - \$20.00
 3. Returned checks - \$30.00
 4. Staff time - \$50.00/hour
 5. Equipment Maintenance and Repair:
 - Snow Cat - \$100.00/hour
 - Boat - \$50.00/per hour
 - ATV/Snowmobile - \$50.00/hour
 - Other Heavy Equipment - \$100.00/hour
 - Vehicle - \$50.00/hour
 6. Researcher - \$5.00/hour
 7. Photo copy - \$.30/each - Black and White - \$1.00/each - Color
 8. Fee collection - \$10.00
 - E. Lodging Fees.
 1. Cabins:
 - (a) Basic: No indoor plumbing or kitchenette \$60 per night - weekend \$40 per night - Sunday through Thursday
 - (b) Deluxe: Indoor plumbing and kitchenette \$80 per night - weekend \$60 per night - Sunday through Thursday
 2. Yurt - (circular, domed portable tent) \$60 per night
 - F. Facility Rental Fees.
 - Jordanelle Visitor Center - Up to \$2,500 per day.

R651-611-5. Reservations.

- A. Camping Reservation Fees.
1. Individual Campsite \$8.50
 2. Group site or building rental \$10.65
 3. Fees identified in No. 1 and No. 2 above are to be charged for both initial reservations and for changes to existing reservations.
- B. All park facilities will be allocated on a first-come, first-serve basis.
- C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.
- D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.
- E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.
- F. The park manager for any group reservation or special use permit may require a cleanup deposit.
- G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.
- H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees

August 21, 2008

Notice of Continuation February 13, 2006

63-11-17(8)

R651. Natural Resources, Parks and Recreation.**R651-617. Permit Violation.****R651-617-1. Revocation or Suspension of Permit.**

A permit may be revoked or suspended for a time, from a minimum of seven (7) days to a maximum of the duration of the permit by the division director or individual designated by the division director if one or more of the following actions are found to have occurred, based on their severity: (1) false or fictitious statements or qualifications were provided to obtain the permit; (2) the terms or conditions of the permit were violated; or (3) the permit holder allowed the permit to be used by an unauthorized person; or (4) the permit is found to be intentionally altered or changed. In addition, a fine of \$500 may be assessed.

KEY: parks**August 21, 2008****Notice of Continuation July 7, 2008****63-11-17(2)(b)**

R652. Natural Resources; Forestry, Fire and State Lands.**R652-7. Public Petitions for Declaratory Orders.****R652-7-100. Authority.**

This rule implements Section 63G-4-503 which authorizes the Division of Forestry, Fire and State Lands to provide the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

R652-7-200. Definitions.

Terms used in this rule are defined in Section 63G-3-102, with the exception of:

1. agency: Division of Forestry, Fire and State Lands.
2. director: director of the Division of Forestry, Fire and State Lands.
3. applicability determination: a determination whether a statute, rule, or order within the primary jurisdiction of the agency should be applied to specified circumstances and how it applies if applicable;
4. declaratory order: an administrative order arising from an applicability determination that establishes rights, status, and other legal relations under a statute, rule, or order; and
5. statute, rule, or order within the primary jurisdiction of the agency:
 - (a) a statute, the implementation of which is expressly or by clear implication assigned to the agency by legislative action or executive order; or
 - (b) a rule or order enacted or issued pursuant to express or clearly implied responsibility to implement a statute.

R652-7-300. Petition and Intervention Procedure.

1. Any person or agency may petition for a declaratory order. A petition will be denied summarily if the petitioner seeks an order concerning issues addressed in an agency adjudicative proceeding completed during the 12-month period preceding the petition date for which the petitioner had notice. A person may seek information on agency policies or positions without a formal request for a declaratory order. Information requests are handled expeditiously and without the procedural formality of the declaratory order process.

2. The petition shall be addressed and delivered to the director. Any person may petition for intervention within 30 days of the filing of a petition for a declaratory order or at least 30 days prior to a specified time established by agreement between the petitioner for a declaratory order and the agency, whichever is later.

R652-7-400. Petition Form.

1. The petition must:
 - (a) be clearly designated as a request for an agency declaratory order;
 - (b) identify the statute, rule, or order to be reviewed or applied;
 - (c) state specifically the factual issue, situation, or circumstance in which applicability is sought;
 - (d) describe the reason or need for the applicability review, including the specific relationship of the requested declaratory order to the legal rights, interests, and objectives of the petitioner;
 - (e) include an address and telephone number where the petitioner can be reached during regular work days;
 - (f) identify the names, addresses, and phone numbers of other persons or parties the petitioner believes or knows will be directly affected by the issuance of a declaratory order; and
 - (g) be signed by the petitioner or his authorized representative.
2. Any letter that expressly states the intent to request an agency declaratory order and substantially complies with the information required in this subsection shall be treated as

fulfilling the requirements of this subsection even though a technical deficiency may exist in the letter.

R652-7-500. Petition Review and Disposition.

1. Upon receipt of a petition, the director or his designee shall review the petition for compliance with R652-7-400. The petition shall be denied if:

- (a) the specified facts, issue, situation, or circumstance is based on disputed facts;
- (b) the petition raises policy questions which have not been addressed by the agency; and
- (c) the petition requests a ruling on any order other than an executed contract.

2. Incomplete, or unclear, petitions shall be returned to the petitioner with an explanation of the additional information required.

3. When a petition is complete, the director shall, in compliance with 63G-4-503(6), issue a written order:

- (a) stating the applicability or nonapplicability of the statute, rule, or order at issue; the reasons for the applicability or nonapplicability of the statute, rule, or order; and any requirements imposed on the agency, the petitioner, or any other person having intervened in or consented to the applicability determination process.
 - (b) setting an informal hearing for the petitioner and any intervenor to examine questions not related to factual disputes;
 - (c) documenting an agreement to issue a declaratory order by a specified time; or
 - (d) denying the petition for a declaratory order.
4. Unless otherwise agreed to by the director or his designee and the petitioner, any petition for which an order is not issued pursuant to (2) above is deemed denied.

KEY: administrative procedures, public petitions**1988****63G-4-503****Notice of Continuation August 26, 2008**

R652. Natural Resources; Forestry, Fire and State Lands.**R652-110. Off-Highway Vehicle Designations.****R652-110-100. Authority.**

This rule implements Section 41-22-10.1 which requires off-highway vehicle use designation.

R652-110-200. Off-Highway Vehicle Designations.

In accordance with Section 41-22-10.1 lands administered by the Division of Forestry, Fire and State Lands may be designated for Off-Highway Vehicle (OHV) use by designating certain roads, trails, and areas as "open" for various classes of OHVs. Pending completion of coordination efforts and detailed designations, all lands are open to over-snow vehicle use unless the use is the basis for a lease between the state and a second party. Existing roads and trails unless signed closed or previously designated closed, are open to OHV use so long as the use is otherwise consistent with state law and not in conflict with current leases or permits. All lands are closed to other than over-snow vehicles, until formally evaluated, at which time certain lands may be designated open.

R652-110-300. Scattered Sections and Isolated Parcel Designations.

The division will coordinate OHV designations with adjacent state and federal land management agencies to reduce confusion over ownership boundaries and complications with enforcement. Division land use and management objectives will be carefully considered when negotiating with other agencies. The division will coordinate designations with counties for all roads maintained by them and with local government to insure compliance with zoning and ordinances, unless otherwise justified.

R652-110-400. Blocked Land Designations.

Common primary roads across division lands may be designated consistent with adjacent land management agencies. All other roads, and areas within land blocks, will be designated in accordance with resource protection requirements, multiple use concepts, and current and projected land use. Coordination with counties will be made for all roads maintained by the counties, and with local government, to insure compliance with zoning and ordinances, unless otherwise justified.

R652-110-500. Method of Designating OHV Use.

Sovereign lands designated "open" for OHV use will be identified as specified in Section 41-22-10.1 with signs or upon maps which will be available for public distribution. Maps will be used to the extent possible and will be published in cooperation with other land management agencies when practicable. Signs will be used only as needed in special situations or when they can be added to boundary designation signs as appropriate.

R652-110-600. Director's Authority to Close Areas.

The director may designate specific areas as closed when necessary to protect endangered species, comply with local zoning and ordinances and for other justified reasons. These areas will be posted closed and amendments made to existing OHV designation maps accordingly.

R652-110-700. Off-Highway Vehicle Use Authorized by Lease or Permit.

Organized OHV events and long term use, primarily OHV connected, will be allowed only upon issuance of a temporary Right-of-Entry or Special Use Lease in accordance with current rules. Use of OHVs is authorized in connection with administration and operation of valid leases and permits as appropriate. OHV use is not authorized beyond that required for administration and operation of valid leases and permits,

except as otherwise designated.

R652-110-800. Off-Highway Vehicle Use Categories.

Categories of designation and corresponding symbols may be utilized consistent with those already adopted by adjacent land management agencies or as follows:

Road Designations

1. Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, 2-wheel motorized vehicles, all-terrain vehicles, bicycles, sedans, over-snow vehicles.

2. Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, bicycles, sedans, over-snow vehicles.

3. Permitted except when signed as closed: high clearance 4 x 4 vehicles and pickups, 2-wheel motorized vehicles, all-terrain vehicles, bicycles, sedans.

4. Closed to all vehicles.

Trail Designations

1. High clearance 4 x 4 vehicles and pickups, sedans prohibited; 2-wheel motorized vehicles, over-snow vehicles, all-terrain vehicles, bicycles permitted.

2. All-terrain vehicles prohibited; 2-wheel motorized vehicles, over-snow vehicles, high clearance 4 x 4 vehicles and pickups, bicycles, sedans permitted.

3. 2-wheel motorized vehicles prohibited; 4 x 4 high clearance vehicles and pickups, all-terrain vehicles; over-snow vehicles, bicycles, sedans permitted.

4. 2 wheel motorized vehicles, all-terrain vehicles, bicycles prohibited; high clearance 4 x 4 vehicles and pickups, over-snow vehicles, sedans permitted.

5. Over-snow and all-terrain vehicles prohibited; 2-wheel motorized vehicles, high clearance 4 x 4 vehicles and pickups, bicycles, sedans permitted.

6. Sedans prohibited; all others permitted.

7. All vehicles prohibited.

Area Designations

1. Closed to all vehicles year around.

2. Ski area, entry only for ski area administration.

3. All vehicles restricted to designated routes. Area open to over-snow vehicles.

4. All vehicles restricted to designated routes. Over-snow vehicles prohibited.

5. Over-snow vehicles prohibited. All other vehicles restricted to designated routes except when signed as closed. Designations may be altered to suit special circumstances.

KEY: land use, leases, permits, roads**1988****Notice of Continuation August 26, 2008****41-22-10.1**

R657. Natural Resources, Wildlife Resources.**R657-6. Taking Upland Game.****R657-6-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

(d) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(e) "Migratory game bird" means, for the purposes of this rule, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(f) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(g) "Upland game" means pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, White-tailed Ptarmigan, and the following migratory game birds: Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the proclamation of the Wildlife Board for taking upland game to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse,**Sharp-tailed Grouse and White-tailed Ptarmigan.**

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sage-grouse permit request forms must be submitted with a handling fee.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sharp-tailed Grouse permit request forms must be submitted with a handling fee.

(4)(a) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

(5) Sage-grouse, Sharp-tailed Grouse, Band-tailed Pigeon and White-tailed Ptarmigan permit forms are available from Division offices and through the Division's Internet address.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications will be available through the Division's internet address. Applications must be submitted online by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2) If an error is found on the application, the applicant may be contacted for correction.

(3) Group applications for Sandhill Crane will not be accepted.

(4)(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.

(5) Each application must include:

(a) a nonrefundable handling fee; and

(b) the hunting or combination license fee, if it has not yet been purchased.

(6) A hunting or combination license may be purchased before applying, or the hunting or combination license will be

issued upon successful drawing results. Fees must be submitted with the application.

(7) The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(8) Any permits remaining after the drawing are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(9) To apply for a resident permit or license, a person must establish residency at the time of purchase.

(10) The posting date of the drawing shall be considered the purchase date of a permit.

(11)(a) An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the Sandhill Crane Drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(12)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-6. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iii) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in Rule R657-5; and

(v) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-7. Nontoxic Shot.

(1) Only nontoxic shot may be used to take Sandhill Crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill Crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-8. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-11. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-13. Baiting.

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill Crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-14. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are posted open.

R657-6-15. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill Crane, sage grouse, or Sharp-tailed Grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill Crane, sage grouse, or Sharp-tailed Grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-17. Identification of Species and Sex.

One fully feathered wing must remain attached to each upland game bird and migratory game bird taken while it is being transported to allow species identification.

R657-6-18. Waste of Upland Game.

A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the animal.

R657-6-19. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-20. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-9 and R657-6-10.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas and federal refuges are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-22. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or

aid of live decoys, recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds.

R657-6-23. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-24. Spotighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits, game laws

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Notice of Continuation July 8, 2005

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-16. Aquaculture and Fish Stocking.****R657-16-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

- (a) institutional aquaculture;
- (b) short-term fishing events;
- (c) private fish stocking; and
- (d) displaying aquaculture products or aquatic wildlife in aquaria.

(2) This rule does not cover private fish ponds as provided in R657-59, or fee fishing and commercial aquaculture as provided in Title 4, Chapter 37, Parts 2 and 3; and the Department of Agriculture Rule R58-17.

(3) A person engaging in any activity provided in Subsection (1) must also comply with the provisions set forth in Rule R657-3 and the Department of Agriculture Rule R58-17.

(4) Any violation of, or failure to comply with, any provision of this rule or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for revocation or suspension of the certificate of registration or denial of future certificates of registration, as determined by a division hearing officer.

R657-16-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquarium" means any container located in an indoor facility that is used to hold fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank approved by the county or in a municipal wastewater treatment system approved by either the state or local health department.

(e) "Display" means to hold live aquaculture products or aquatic wildlife in an aquarium for the purpose of viewing for commercial or noncommercial purposes.

(f) "FEMA" means Federal Emergency Management Administration.

(g) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

(h) "Ornamental fish" means fish that are raised or held for their beauty rather than use, or that arouse interest for their uncommon or exotic characteristics, including tropical fish, goldfish, and koi, but not including those species listed as prohibited or controlled in Rule R657-3-34.

(i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.

(j) "Private stocking" means noncommercial stocking of live aquaculture products in waters of the state not eligible as a private fish pond under R657-59 or other private fish facility.

(k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(l) "Short-term fishing event" means any event where privately acquired fish are held or confined for a period not to exceed seven days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.

R657-16-3. Certificate of Registration Required.

(1) A certificate of registration is required before any person may engage in any of the following activities:

(a) produce, propagate, rear, or culture any aquatic wildlife or aquaculture product;

(b) privately stock fish;

(c) acquire aquaculture products for a short-term fishing event; or

(d) display aquaculture products in an aquarium, except a certificate of registration is not required for ornamental fish held in an aquarium.

(2) Only species approved by the division and listed on the certificate of registration may be possessed and used in conjunction with the activities covered by this rule.

(3) No aquaculture facility shall be developed on natural lakes or natural flowing streams, or reservoirs constructed on natural stream channels as provided in Section 23-15-10. Other waters, including canals, off-stream reservoirs or ponds, and excavated ponds or raceways, may be considered for an aquacultural use.

R657-16-4. Application for Certificates of Registration.

(1) An application for a certificate of registration must be submitted to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(2) The application may require up to 45 days for processing, except for a short-term fishing event, which may require up to 10 days for processing.

(3) Application forms are available at all division offices and at the division's Internet address.

(4) Applications that are incomplete, filled out incorrectly, or submitted without the appropriate fee may be returned to the applicant.

R657-16-5. Renewal of Certificates of Registration.

(1) Certificates of registration are valid for the dates identified on the certificate of registration.

(2) Certificates of registration are renewable on or before the expiration date as identified on the certificate of registration.

R657-16-6. Failure to Renew Certificates of Registration Annually.

(1) If an operator of an aquaculture facility, fails to renew the certificate of registration annually, or the hearing officer suspends the certificate of registration, all live aquatic wildlife or aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquatic wildlife or aquaculture products must be removed within 30 days of revocation or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquatic wildlife or aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

(2) Aquatic wildlife or aquaculture products from a facility not health approved under Section 4-37-501 may not be moved alive.

(3) Aquatic wildlife or aquaculture products from an aquatic facility infected with any of the pathogens specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such diseases.

R657-16-7. Importation.

(1)(a) To import live aquatic wildlife or aquaculture products into Utah, a certificate of registration is required.

(b) Species of aquatic wildlife or aquaculture products that may be imported are provided in Rule R657-3-34.

(2)(a) To import live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.

(c) A copy of this form must also accompany the fish during transport.

(3) Applications to import aquatic wildlife or aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 45 days for action.

R657-16-8. Acquiring and Transferring Aquaculture Products.

(1) Live aquatic wildlife or aquaculture products, other than ornamental fish, may be:

(a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if both the species and the source are approved on a certificate of registration for importation or by the Utah Department of Agriculture and Food; and

(b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same individual, because each facility is treated separately, regardless of ownership.

(2)(a) Any person who has been issued a valid certificate of registration may transport live aquatic wildlife or aquaculture products as specified on the certificate of registration to the facility or approved stocking site.

(b) Except as provided in Subsection (3), all transfers or shipments of live aquatic wildlife or aquaculture products must be accompanied by documentation of the source and destination of the fish, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species; and

(iii) name, address, and certificate of registration number of the destination, if the destination is a fish hatchery or private water; or

(iv) name, address, county, and division water identification number if the destination is a public water.

(3)(a) Live aquatic wildlife or aquaculture products may be shipped through Utah without a certificate of registration provided that:

(i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

R657-16-9. Inspection of Records and Facilities.

(1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:

(a) records of purchase, acquisition, distribution, and production histories of aquatic wildlife or aquaculture products;

(b) certificates of registration; and

(c) valid identification of stocks.

(2) Division representatives may conduct pathological, fish culture, or physical investigations at any facility, pond, or holding facility during reasonable hours.

R657-16-10. Private Fish Ponds.

Private fish ponds are regulated under the provisions in R657-59.

R657-16-11. Short-Term Fishing Events.

(1) A person sponsoring a short-term fishing event must obtain a certificate of registration prior to holding the event, except the division may conduct short-term fishing events for educational purposes without a certificate of registration.

(2)(a) A certificate of registration for a short-term fishing event may be obtained by applying to the Wildlife Registration Office at the division's Salt Lake City office a minimum of 10 days prior to the event.

(b) Application forms are available at all division offices.

(c) After review and confirmation by the division that the event poses no identifiable adverse threats to other fish or wildlife species, a certificate of registration may be issued.

(d) The certificate of registration may cover multiple events, which must be requested on the application form.

(3) A fishing license and bag limit is not required of participants in a short-term fishing event unless stated otherwise on the certificate of registration.

(4) For short-term fishing events where fishing licenses and bag limits under Rule R657-13 do not apply, a receipt must be given to participants transporting dead aquaculture products or aquatic wildlife away from the event. Such receipt must include the following information:

(a) name of event sponsor;

(b) date caught;

(c) certificate of registration number; and

(d) species and number of dead aquaculture products or aquatic wildlife being transported.

(5) Live fish remaining at the end of the event may not be transported alive, released, or stocked.

(6) A certificate of registration for a short-term fishing event may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

R657-16-12. Private Stocking.

(1) An individual wishing to stock fish for private, noncommercial purposes in a body of water not eligible as a private fish pond under R657-59 must first obtain a certificate of registration for private stocking.

(2) Fish released in a state water not eligible as a private fish pond under R657-59 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A water that does not qualify as a private fish pond may not be screened to contain fish stocked (pursuant to a certificate of registration for private stocking), except that a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping.

(4)(a) Private stocking is limited only to those species approved on the certificate of registration.

(b) Species approval will be based on the biological suitability of the requested species compared to the needs of the fish and other wildlife in the drainage.

(c) An amendment to the certificate of registration is

required each time fish are stocked, except the division may allow a person to stock fish more than once if the request is made on the application, and is approved by the division.

(d) Fish may be acquired only from a source that has a valid fish health approval number assigned by the Department of Agriculture.

(5)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

- (i) on privately owned land;
- (ii) the body of water is a reservoir, the reservoir is wholly contained on the land owned by the applicant; and
- (iii) the body of water is not stocked or otherwise actively managed by the division.

(b) An application for a certificate of registration for private stocking of fish other than grass carp shall not be approved if:

- (i) the fish to be stocked are for a commercial purpose; or
- (ii) in the opinion of the division, stocking would cause harm to other species of fish or wildlife.

(6) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

- (a) the severity of the weed problem;
- (b) availability of other suitable means of weed control;
- (c) adequacy of screening to contain the grass carp; and
- (d) potential for conflict or detrimental interactions with other species of fish or wildlife.

(7) A certificate of registration for private stocking may be issued after review of the appropriateness of the requested species and inspection of the water to be stocked by a division representative to ensure compliance with the stipulations of this rule and the absence of any threat to other fish or wildlife species.

(8) A certificate of registration for private stocking may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

R657-16-13. Institutional Aquaculture.

(1) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.

(2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:

- (a) sold;
- (b) stocked; or
- (c) transferred into waters of the state unless specifically authorized by the certificate of registration.

(3) The fish health approval requirements of Section 4-37-501 apply.

(4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.

(b) A certificate of registration may be renewed on or before July 31 each year by submitting an application and the records described in Subsection (5).

(5)(a) A person possessing a valid certificate of registration for institutional aquaculture must submit to the division a report of each acquisition, distribution, transfer, or stocking of live aquatic wildlife or aquaculture products.

(b) This report must be sent to the division no later than June 30, and must be received before the certificate of registration may be renewed.

(c) Documentation of source, quantity, species, health approval status, and destination of all live aquatic wildlife or aquaculture products must accompany all shipments or transfers.

R657-16-14. Display.

(1)(a) A certificate of registration is required to hold live

aquatic wildlife or aquaculture products in an aquarium for the purpose of viewing or displaying for commercial or noncommercial purposes, except the division may hold live aquatic wildlife or aquaculture products in an aquarium for educational viewing or display without a certificate of registration. A certificate of registration is not required to display ornamental fish.

(b) Live aquatic wildlife or aquaculture products that are displayed must meet the health approval standards described in Section 4-37-501.

(2)(a) Aquatic wildlife taken from the wild may not be displayed or held in an aquarium.

(b) The division may take aquatic wildlife from the wild for placement in an aquarium for purposes of display or education.

(3) Live aquaculture products held in an aquarium for display may not be transferred, sold alive, released, or stocked. They may be sold as long as they are first killed and prepared for consumption.

(4)(a) A certificate of registration for display of live aquaculture products in an aquarium may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

(b) The certificate of registration is renewable every five years on or before the renewal date as specified on the certificate of registration by submitting an application, paying a fee in the amount established by the Wildlife Board, and submitting the records described in Subsection (5).

(5)(a) A person possessing a certificate of registration for display must submit to the division an annual report of each purchase or acquisition of live aquaculture products. This report must include the following information:

- (i) name, address, certificate of registration number, and health approval number of the source; and
- (ii) number and weight acquired, by species.

(b) This record must be submitted to the division no later than January 30 each year, and must be received before the certificate of registration can be renewed.

KEY: wildlife, aquaculture, fish

August 21, 2008

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23-15-9

23-15-10

R657. Natural Resources, Wildlife Resources.**R657-19. Taking Nongame Mammals.****R657-19-1. Purpose and Authority.**

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person capturing any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.

(1) A person may not purchase or sell any nongame mammal or its parts.

(2)(a) The live capture of any nongame mammals is prohibited under this rule.

(b) The live capture of nongame mammals species may be allowed as authorized under Rule R657-3.

(3) Section 23-20-8 does not apply to the taking of nongame mammal species covered under this rule.

R657-19-4. Nongame Mammal Species - Certificate of Registration Required.

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - *Ochotona princeps*.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, *Cynomys parvidens*, as provided in Sections R657-19-6, R657-19-7, R657-19-8 and R657-19-9.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - *Peromyscus eremicus*;

(b) kangaroo rats - *Dipodomys*, all species;

(c) Southern grasshopper mouse - *Onychomys torridus*; and

(d) Virgin River montane vole - *Microtus montanus rivularis*, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - *Sciurus aberti*;

(b) Northern rock mouse - *Peromyscus nasutus*; and

(c) spotted ground squirrel - *Spermophilus spilosoma*.

(6) The division may deny a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of:

(i) Title 23 of the Utah Code;

(ii) Title R657 of the Utah Administrative Code;

(iii) a certificate of registration;

(iv) an order of the Wildlife Board; or

(v) any other law that bears a reasonable relationship to the applicant's ability to safely and responsibly perform the activities that would be authorized by the certificate of registration;

(b) the applicant misrepresents or fails to disclose material information required in connection with the application;

(c) taking the nongame mammal as proposed in the application violates any federal, state or local law;

(d) the application is incomplete or fails to meet the issuance criteria set forth in this rule; or

(e) the division determines the activities sought in the application may significantly damage or are not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

R657-19-5. Nongame Mammal Species - Certificate of Registration Not Required.

(1) All nongame mammal species not listed in Section R657-19-4 as requiring a certificate of registration, may be taken:

(a) without a certificate of registration;

(b) year-round, 24-hours-a-day; and

(c) without bag or possession limits.

(2) A certificate of registration is not required to take any of the following species of nongame mammals, however, the taking is subject to the provisions provided under Section R657-19-10:

(a) White-tailed prairie dog, *Cynomys leucurus*; and

(b) Gunnison prairie dog, *Cynomys gunnisoni*.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, *Cynomys parvidens*, without first obtaining a certificate of registration from the division.

(b) A certificate of registration for taking Utah prairie dogs may be issued as provided in Subsection (i) or Subsection (ii), or Subsection (iii), if the taking will not further endanger the existence of the species:

(i) in cases where Utah Prairie dogs are causing damage to agricultural lands as provided in the rules of the U.S. Fish and Wildlife Service; or

(ii) as provided in a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service under an approved Habitat Conservation Plan; or

(iii) as provided under a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service allowing take of Utah prairie dogs on specified private lands as part of an approved conservation agreement enacted between the U.S. Fish and Wildlife Service and the owner of those private lands.

(c) A person may apply for a certificate of registration at the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720.

(d) A landowner, lessee, or their immediate family member, or an employee on a regular payroll and not hired specifically to take Utah prairie dogs, may apply for a certificate of registration.

(e)(i) A person, other than those listed in Subsection (d), may apply for a certificate of registration to take Utah prairie dogs as a designee of the landowner or lessee provided the application includes:

(A) an explanation of the need for the certificate of registration to be issued;

(B) justification for utilization of the designee; and

(C) the landowner or lessee's signature.

(ii) A maximum of two designee certificates of registration may be issued per landowner or lessee.

(iii) Each designee application shall be considered individually based upon the explanation and justification provided.

(f) An application for a certificate of registration must include:

- (i) full name;
- (ii) complete mailing address;
- (iii) phone number;
- (iv) date of birth;
- (v) weight and height;
- (vi) gender;
- (vii) color of hair and eyes;
- (viii) social security number;
- (ix) driver's license number, if issued;
- (x) proof of hunter education certification if the applicant was born after December 31, 1965; and
- (xi) the township, range, section and 1/4 section of the agricultural lands where the prairie dogs will be taken.

(g) An applicant must be at least 14 years of age at the time of application and must abide by the provisions for children being accompanied by adults while hunting with a weapon pursuant to Section 23-20-20.

(h) After review of the application, a certificate of registration may be issued.

(i) A maximum of four certificates of registration may be issued to any landowner or lessee, including those issued to the landowner or lessee's designees.

(j) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom the certificate of registration is issued.

(k) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(l) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping as specified on the certificate of registration.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition to the requirements of this rule, any person taking Utah prairie dogs must comply with state laws, and local ordinances and laws.

(d) A person at least 14 years of age and under 16 years of age who takes Utah Prairie dogs must be accompanied by an adult with a valid certificate of registration to take Utah Prairie dogs on the same property.

R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person who obtains a valid certificate of registration may take Utah prairie dogs only on private lands within the following counties:

- (a) Beaver;
- (b) Garfield;
- (c) Iron;
- (d) Kane;
- (e) Millard;
- (f) Piute;
- (g) Sanpete;
- (h) Sevier;
- (i) Washington; and
- (j) Wayne.

(2) Taking of a Utah prairie dog on any land or by any method, other than as provided in the valid certificate of registration, including any public land, is a violation of state and federal law.

(3) Any person, who is specifically named on a valid

certificate of registration, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31, except as provided in Subsection R657-19-6(1)(b)(iii).

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration, except as provided in Subsection R657-19-6(1)(b)(iii).

(b) The total range-wide take of Utah prairie dogs causing agricultural damage is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take of Utah Prairie Dogs.

(1) The following information must be reported to the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720, every 30 days:

(a) the name and signature of the certificate of registration holder;

- (b) the person's certificate of registration number;
- (c) the number of Utah prairie dogs taken; and
- (d) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

(2) Failure to report the information required in Subsection (1), within 30 days, may result in the denial of future applications for a certificate of registration to take Utah prairie dogs.

R657-19-9. Unlawful Possession of Utah Prairie Dogs.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. White-tailed and Gunnison Prairie Dogs.

(1)(a) A license or certificate of registration is not required to take either white-tailed or Gunnison prairie dogs.

(b) There are no bag limits for white-tailed or Gunnison prairie dogs for which there is an open season.

(2)(a) White-tailed prairie dogs, *Cynomys leucurus*, may be taken in the following counties from January 1 through March 31, and June 16 through December 31:

- (i) Carbon County;
- (ii) Daggett County;
- (iii) Duchesne County;
- (iv) Emery County;
- (v) Morgan;
- (vi) Rich;
- (vii) Summit County;
- (viii) Uintah County, except in the closed area as provided in Subsection (2)(b)(i);
- (ix) Weber; and
- (x) all areas west and north of the Colorado River in Grand and San Juan counties.

(b) White-tailed prairie dogs, *Cynomys leucurus*, may not be taken in the following closed area in order to protect the reintroduced population of black-footed ferrets, *Mustela nigripes*:

(i) Boundary begins at the Utah/Colorado state line and Uintah County Road 403, also known as Stanton Road, northeast of Bonanza; southwest along this road to SR 45 at Bonanza; north along this highway to Uintah County Road 328, also known as Old Bonanza Highway; north along this road to

Raven Ridge, just south of US 40; southeast along Raven Ridge to the Utah/Colorado state line; south along this state line to point of beginning.

(3) The taking of White-tailed prairie dogs, *Cynomys leucurus*, is prohibited from April 1 through June 15, except as provided in Subsection (5).

(4)(a) The taking of Gunnison prairie dogs, *Cynomys gunnisoni*, is prohibited in all areas south and east of the Colorado River, and north of the Navajo Nation in Grand and San Juan counties from April 1 through June 15.

(b) Gunnison prairie dogs may be taken in the area provided in Subsection (4)(a) from June 16 through March 31.

(5) Gunnison prairie dogs and White-tailed prairie dogs causing agricultural damage or creating a nuisance on private land may be taken at any time, including during the closed season from April 1 through June 15.

R657-19-11. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

(3) Pursuant to Section 23-19-9, the division may suspend a certificate of registration issued under this rule.

KEY: wildlife, game laws

March 6, 2006

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23-13-3

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-23. Utah Hunter Education Program.****R657-23-1. Purpose and Authority.**

Under authority of Section 23-19-11, this rule provides the process and requirements for:

- (1) hunter education instructor and student training; and
- (2) presenting and obtaining proof of having successfully completed an approved hunter education course.

R657-23-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.
 - (b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.
 - (c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.
 - (d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country, and signed by a hunter education instructor, verifying successful completion of an approved hunter education course.
 - (e) "Hunter Education Registration Certificate" means a document purchased from the division that is valid for 365 days from date of purchase which is required to sign up for and graduate from the hunter education course. This document becomes a valid hunting license upon validation of course completion by a certified hunter education instructor.
 - (f) "Practical exercise and testing day" means a student has successfully completed the hunter education course online and shall participate in taking a written test, a practical shooting test, and instruction on firearms safety and hunter responsibility during a minimum of five hours with a hunter education instructor.
 - (g) "Trainer" means a volunteer hunter education instructor or Division employee who has been certified by the division to train hunter education instructors.
 - (h) "Instructor" means a volunteer hunter education instructor or division employee who has been certified by the division to teach the hunter education program to students.
 - (i) "Online hunter education course" means a hunter education course that is completed online substituting the minimum 12 hours classroom requirement, and is taken through the division's Internet address.
 - (j) "Student" means a person who is registered in a hunter education course being taught by a certified hunter education instructor.
 - (k) "Traditional hunter education course" means a hunter education course that is a minimum of 12 classroom hours, a written test and a practical shooting test.

R657-23-3. Hunter Education Required.

- (1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of having passed a division approved hunter education course.
- (b) A person may take a hunter education course offered by the division as provided in Subsection (2), (3), or (4).
- (2) Completion of a traditional hunter education course requires students to:
 - (a) purchase a hunter education registration certificate from a Division authorized licensed vendor;
 - (b) attend the minimum 12-hour classroom course;
 - (c) behave in a safe and responsible manner in class;
 - (d) obtain a passing score of at least 75% on a written test;

and

- (e) obtain a passing score of at least 50% on a shooting practical test.
- (3) Completion of the online hunter education course requires students to:
 - (a) purchase a hunter education registration certificate from a Division authorized licensed vendor.
 - (b) pre-register for the field day by contacting the instructor by mail, e-mail or telephone;
 - (c) comprehensively read each chapter of the online workbook, and complete and obtain a passing score of at least 80% of each quiz that is provided after each chapter of the workbook;
 - (d) behave in a safe and responsible manner while attending the field day;
 - (e) obtain a passing score of at least 75% on a written test;
- and
 - (f) obtain a passing score of at least 50% on a shooting practical test.
- (4)(a) The division will issue a Blue Card to each individual who successfully completes the hunter education course.
 - (b) A Blue Card shall not be issued to a person who has not successfully completed the hunter education requirements.
- (5) A member of the United States Armed Forces or Utah National Guard is exempt from the shooting practical test required in Subsections 2 and 3 above if they can provide a copy of their federal form 201 from the military outlining their firearms training to the hunter education instructor prior to the firearms practical test.
- (6) The division shall accept other states, provinces, and countries criteria and qualifications for their respective courses, which meet or exceed the International Hunter Education Association hunter education standards.

R657-23-4. Documents Accepted as Proof of Completion of a Hunter Education Course.

- (1) The division and division approved license agents shall accept proof of completion of an approved hunter education course in accordance with Section 23-19-11.
- (2)(a) Any person who has completed an approved hunter education course in another state, province, or country and becomes a Utah resident must obtain a transfer Blue Card prior to purchasing a resident hunting license.
 - (b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).
- (3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.
 - (4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.
 - (b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.
 - (5)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office, or may contact an authorized division representative to obtain a duplicate Blue Card. The person must complete an affidavit and request a record's search.
 - (b) Upon verification of completion of the hunter education course, the division or authorized division

representative may issue the person a duplicate Blue Card.

(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under Section R657-23-3.

(7) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.

(8) The division may charge a fee for the services provided in Subsections (2), (3), (4), and (5).

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to: EITHER

(a) attend the 18 hour classroom course conducted by a trainer;

(b) pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) obtain a passing score of at least 80% on a written test; and

(d) obtain a passing score of at least 50% on a shooting practical test.

OR

(a) Complete the Division's online instructor course.

(b) Pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) Attend a 6 hour workshop conducted by a trainer.

(d) Obtain a passing score of at least 75% on a written test; and

(e) Obtain a passing score of at least 50% on a shooting practical test.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

KEY: wildlife, game laws, hunter education

August 21, 2008

23-19-11

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R657. Natural Resources, Wildlife Resources.**R657-55. Wildlife Convention Permits.****R657-55-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities and attracting a regional or national wildlife convention to Utah.

(3) The selected conservation organization will conduct a random drawing at a convention held in Utah to distribute the opportunity to receive wildlife convention permits.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in 2007 through 2011 to one qualified conservation organization.

R657-55-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Special nonresident convention permit" means one wildlife convention permit for each once-in-a-lifetime species that is only available to a nonresident hunter legally eligible to hunt in Utah.

(c) "Wildlife Convention" means a multi-day event held within the state of Utah that is sponsored by multiple wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife convention may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(d) "Wildlife Convention Permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife convention; and

(ii) allows the permittee to hunt for the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

(e) "Wildlife Convention Permit series" means a single package of permits to be determined by the Wildlife Board for:

- (i) deer;
- (ii) elk;
- (iii) pronghorn;
- (iv) moose;
- (v) bison;
- (vi) rocky mountain goat;
- (vii) desert bighorn sheep;
- (viii) rocky mountain bighorn sheep;
- (ix) wild turkey;
- (x) cougar; or
- (xi) black bear.

(f) "Secured Opportunity" means the opportunity to participate in a specified hunt that is secured by an eligible applicant through the drawing process.

(g) "Successful Applicant" means an individual selected to receive a wildlife convention permit through the drawing process.

R657-55-3. Wildlife Convention Permit Allocation.

(1) The Wildlife Board may allocate wildlife convention permits by May 1 of the year preceding the wildlife convention.

(2) Wildlife convention permits shall be issued as a single series to one conservation organization.

(3) The number of wildlife convention permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) a percentage of the permits available to nonresidents in the annual big game drawings matched by a proportionate number of resident permits.

(4) Wildlife convention permits, including special nonresident convention permits, shall not exceed 200 total permits.

(5) Wildlife convention permits designated for the convention each year shall be deducted from the number of public drawing permits.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to verify they possess a current Utah hunting or combination license before allowing them to apply for a convention permit.

(b) select successful applicants for the wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permits without purchasing admission to the wildlife convention;

(d) notify the division of the successful applicant of each wildlife convention permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to wildlife convention permit series audits by a division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being found eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permits at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a wildlife convention permit except that only a nonresident of Utah may apply for a special nonresident convention permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed \$5 per application submitted at the convention.

(3) Applicants must validate their application in person at the wildlife convention to be eligible to participate in the random drawing process, for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt for which they are eligible.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

R657-55-6. Drawing Procedures.

(1) A random drawing or selection process must be conducted for each wildlife convention permit.

(2) No preference or bonus points shall be awarded in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife convention permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife convention permits between resident and nonresident applicants, except that special nonresident convention permits may only be awarded to a nonresident of Utah.

(5) Drawings will be conducted at the close of the convention.

(6) Applicants do not have to be present at the drawing to be awarded a wildlife convention permit.

(7) The conservation organization shall draw twenty five

eligible alternates for each wildlife convention permit and provide the division with a finalized list. This list will be maintained by the conservation organization until all permits are issued.

(8) The division shall contact successful applicants by phone or mail, and the conservation organization may post results on a designated website.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit to the successful applicant as designated by the conservation organization.

(2) The division must provide a wildlife convention permit to each successful applicant, except as otherwise provided in this rule.

(3) The division shall provide each successful applicant a letter indicating the permit secured in the drawing, the appropriate fee owed the division, the date this fee is due, and a postage paid envelope to return payment to the division.

(4) Successful applicants must provide the permit fee payment in full to the division and will be issued the designated wildlife convention permit upon receipt of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(5) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(6) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(7) Any successful applicant who fails to satisfy the following requirements will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(a) The applicant fails to return the appropriate permit fee in full by the date provided in Subsection (3) or

(b) The applicant did not possess a valid Utah hunting or combination license at the time the convention permit application was submitted and the permit received.

R657-55-8. Surrender or Transfer of Wildlife Convention Permits.

(1)(a) If a person selected to receive a wildlife convention permit is also successful in obtaining a Utah limited entry permit for the same species in the same year or obtaining a general permit for a male animal of the same species in the same year, that person cannot possess both permits and must select the permit of choice.

(b) In the event the secured opportunity is willingly surrendered before the permit is issued, the next eligible applicant on the alternate drawing list will be selected to receive the secured opportunity.

(c) In the event the wildlife convention permit is surrendered, the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit, and the permit fee will not be refunded, except as provided in Sections 23-19-38 and 23-19-38.2.

(2) If a person is successful in obtaining more than one wildlife convention permit for the same species, the applicant must select the permit of choice and the remaining permit will go to the next eligible applicant on the alternate drawing list.

(3) A person selected by a conservation organization to receive a wildlife convention permit, may not sell or transfer the permit, or any rights thereunder to another person in accordance with Section 23-19-1.

(4) If a person is successful in obtaining a wildlife convention permit but is legally ineligible to hunt in Utah the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit.

R657-55-9. Using a Wildlife Convention Permit.

(1) A wildlife convention permit allows the recipient to:

- (a) take only the species for which the permit is issued;
- (b) take only the species and sex printed on the permit; and
- (c) take the species only in the area and during the season specified on the permit.

(2) The recipient of a wildlife convention permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

KEY: wildlife, wildlife permits
August 21, 2008

23-14-18
23-14-19

R657. Natural Resources, Wildlife Resources.**R657-57. Division Variance Rule.****R657-57-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CWMU" means cooperative wildlife management unit, as defined in Section 23-23-2;

(b) "Event or condition" means a circumstance in a person's life beyond their control that precludes or substantially limits their ability to obtain or use a wildlife document;

(c) "Immediate family member" means a person's spouse, child, stepchild, grandchild, brother, sister, parent, stepparent, grandparent, mother-in-law, or father-in-law;

(d) "Variance" means remedial relief granted by the Division or Wildlife Board to restore a person's opportunity to obtain or use a wildlife document which is completely lost or substantially impaired because of an intervening event or condition; and

(e) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the Division.

R657-57-3. Division Variance Authority.

(1) The Division may issue variances to qualified individuals, subject to the standards, limitations, requirements, and procedures in this rule.

R657-57-4. Division Variance Authority Scope.

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

(i) the variance request involves a wildlife document authorized in R657-57-5;

(ii) the applicant was completely precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions;

(iii) the season extension is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(2)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document authorized in R657-57-5;

(ii) the applicant was precluded or substantially impaired from filing a timely application because of a qualifying event or condition set forth in R657-57-6;

(iii) the untimely application was rejected and a bonus or

preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(3) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife convention pursuant to R657-55.

R657-57-5. Eligible Wildlife Documents.

(1) The Division's authority to grant a variance consistent with the requirements of this rule extends to all resident and nonresident wildlife documents, excluding the following:

(a) hunting licenses;

(b) fishing licenses;

(c) combination licenses;

(d) waterfowl permits;

(e) sandhill crane permits;

(f) upland game permits;

(g) furbearer licenses;

(h) bobcat and marten permits;

(i) cougar harvest objective permits;

(j) cougar and bear pursuit permits; and

(k) certificates of registration.

(2) A season extension variance for a CWMU permit may not be granted without the concurrence of the CWMU operator.

R657-57-6. Qualifying Events and Conditions.

(1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:

(a) personal illness or injury;

(b) the death, or significant injury or illness of an immediate family member; or

(c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency.

R657-57-7. Variance Application.

(1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within 200 days of the:

(a) last day of the hunting season for which a season extension variance is requested; or

(b) drawing application deadline for which a bonus or preference point variance is sought. (2) An application for a season extension variance shall contain the following information and documentation:

(a) name, address and telephone number of the applicant;

(b) a brief statement of the variance relief sought;

(c) a description of the wildlife document for which a season extension variance is sought, including the permit number, species and sex, season dates, and weapon type;

(d) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag;

(e) a statement verifying the applicant was completely precluded from participating in a qualified hunt because of:

(i) personal illness or injury;

(ii) the death, or significant injury or illness of an immediate family member; or

(iii) mobilization or deployment under orders of the

United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(f) corroborating documentation of the qualifying event or condition listed in Subsection (2)(e), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of duty while deployed or mobilized.

(3) An application for a bonus or preference point variance shall contain the following information and documentation:

(a) name, address and telephone number of the applicant;

(b) a brief statement of the variance relief sought;

(c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;

(d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of:

(i) personal illness or injury;

(ii) the death, or significant injury or illness of an immediate family member; or

(iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of their duty while deployed or mobilized.

(4) The Division may reject an application that is incomplete or that contains false or misleading information.

(5) The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.

(6) The Division shall make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

R657-57-8. Division Variance Committee.

(1) The Division shall establish a variance committee consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees, which shall:

(a) review variance applications submitted to the Division pursuant to this rule;

(b) determine facts relative to variance requests;

(c) apply the provisions of this rule to relevant facts; and
(d) grant or deny variance requests in accordance with this rule.

(2) Any variance request granted or denied shall be reviewed and approved by the Division director/designee before notice of decision is provided to the variance request applicant.

R657-57-9. Variance Denial.

(1) The variance committee and Division director shall deny a variance request where the applicant:

(a) fails to satisfy the variance criteria set forth in this rule;

(b) is under a judicial or administrative order suspending his/her Utah hunting privileges for the species at the time;

(i) the variance request is filed or at any time during a extension season; or

(ii) the wildlife document application period expired for a bonus or preference point variance;

(c) was legally ineligible to receive or use the wildlife document for which a season extension variance is sought;

(d) is legally ineligible to hunt during the extension season;

(e) is legally ineligible to use the weapon type authorized by the wildlife document during the original hunting season or the extension season;

(f) provides false or misleading information on a material fact in the variance request application; or

(g) provides false or misleading information on a material fact in a previous variance request application.

(2) The Division may deny a variance request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-10. Wildlife Board Appeals.

(1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and received by the Wildlife Board within 30 calendar days of the issuance date on the Division's decision.

(2) The appeal shall contain the following information and documentation:

(a) name, address and telephone number of the petitioner;

(b) a statement of the variance relief sought and justification for the relief;

(c) a description of the wildlife document for which the variance is sought, including the document number, species and sex, season dates, and weapon type;

(d) the original wildlife document for which the variance is sought;

(e) a statement describing the degree of lost opportunity because of an event or condition; and

(f) corroborating documentation of the event or condition listed in R657-57-7(2)(e) and (3)(d), which may include:

(i) a physician's written statement;

(ii) a certified death certificate photocopy;

(iii) a photocopy of the military orders;

(iv) a letter from an employment supervisor on official letterhead; or

(v) court documentation.

(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.

(4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.

(5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner will be given an opportunity to address the Wildlife Board concerning the appeal.

(a) The Wildlife Board will provide the petitioner notice

of the date, time, and location of the hearing, and the petitioner or a representative shall be present at the hearing, in person or telephonically, to advance the merits of the variance appeal.

(b) Failure to participate in the hearing may result in dismissal of the variance appeal.

(6) The Wildlife Board may sustain, overturn, or modify the Division's order which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in R657-57-11 through R657-57-13.

(7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

R657-57-11. Wildlife Board Variance Authority.

(1) The Wildlife Board may grant a variance to any regulation promulgated in Title R657 of the Administrative Code or in proclamation concerning the acquisition or use of a wildlife document, provided the event or condition justifying the variance:

(a) is not the result of the applicant's willful misconduct or gross negligent acts or omissions;

(b) precludes the applicant from participating in:

(i) the activity authorized by the wildlife document during a substantial portion of the authorized season; or

(ii) the application or drawing procedures for receiving a wildlife document; and

(c) is of a nature that it deprives opportunity from the applicant in a substantially more severe manner than other similarly situated individuals.

(2) The Wildlife Board is limited to considering only those variance applications on which the Division has issued a letter indicating the variance relief sought is beyond its legal authority to grant.

(3) The Wildlife Board may grant a variance that extends a wildlife document season no more than five years into the future.

(4) The Wildlife Board may award a bonus or preference point pursuant to a variance request only when the applicant would have received such a point had the event or condition not intervened.

(5) The Wildlife Board may not grant a variance in direct conflict with any provision of the Wildlife Code or elsewhere in statute.

(6) The Wildlife Board may not refund wildlife document fees, except as authorized in Sections 23-19-38 and 23-19-38.2.

R657-57-12. Variance Guidelines.

(1) The Wildlife Board may use the following guidelines in considering and deciding variance appeals and requests submitted pursuant to this rule:

(a) monetary cost of the wildlife document;

(b) degree of difficulty in obtaining the original wildlife document;

(c) future opportunity to obtain the same or similar wildlife document;

(d) extent of lost opportunity;

(e) time actually engaged in the activity authorized by the wildlife document relative to the overall season length;

(f) time available to engage in the activity authorized by the wildlife document prior to the event or condition precluding further activity;

(g) impact on wildlife management objectives;

(h) degree of difficulty in tracking and monitoring season extensions into the future;

(i) applicant's fault or contribution in failing to mitigate the degree of lost opportunity;

(j) nature of the event or condition contrasted against the advisability of attempting to insure optimal opportunity;

(k) objective of a variance is to restore lost opportunity,

not provide increased opportunity; and

(l) consistency with previous variance request decisions.

(2) Nothing herein shall be construed as limiting or prohibiting the Wildlife Board from considering additional factors in its discussions and deliberations concerning variance appeals and requests.

R657-57-13. Wildlife Board Variance Denial.

(1) The Wildlife Board shall deny a variance appeal or request where the applicant:

(a) fails to satisfy the variance criteria set forth in this rule;

(b) is under a judicial or administrative order suspending his/her wildlife document privileges at the time the variance request is filed or at any time while the variance would be in effect;

(c) was legally ineligible to apply for, obtain, or use the original wildlife document for which a variance is sought;

(d) is legally ineligible to engage in the activity proposed for authorization in a variance;

(e) is legally ineligible to use the weapon type or implement authorized by a wildlife document during the original season or the proposed substitute season;

(f) provides false or misleading information on a material fact in the variance request application or the appeal; or

(g) provides false or misleading information on a material fact in a previous variance request application or appeal.

(2) The Wildlife Board may deny a variance appeal or request when it is contrary to sound public policy, wildlife management objectives, Division policies and interests, or the interests sought to be served by this rule.

R657-57-14. Fraud, Deceit, or Misrepresentation.

Any variance obtained under this rule by fraud, deceit or misrepresentation is void.

R657-57-15. Finality of Decision.

(1) The decision of the Wildlife Board on any variance appeal or request under this rule constitutes final agency action and is not subject to:

(a) further administrative review; or

(b) judicial review under Title 63G, Chapter 4 of the Utah Code, Utah Administrative Procedures Act.

(2) The variance relief authorized in this rule is discretionary and neither a right nor entitlement in form or substance. The Division and Wildlife Board shall exercise sole discretion in determining whether relief will be granted and to what extent.

KEY: wildlife, permits

August 21, 2008

23-14-18

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-59. Private Fish Ponds.****R657-59-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife, or their eggs or gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization.

(i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:

(A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;

(B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and

(C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying triploidy with a 95% or greater success rate.

(ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids.

(iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).

(e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond.

(f)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States. HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(ii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.

(g) "Ornamental fish" means fish that are raised or held for their beauty rather than use, or that arouse interest for their uncommon or exotic characteristics, including tropical fish, goldfish, and koi, but not including those species listed as prohibited or controlled in Rule R657-3-34.

(h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.

(i) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(j) "Salmonid" means any fish belonging to the trout/salmon family.

R657-59-3. Certificate of Registration Not Required.

(1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided the following conditions are satisfied:

(a) the pond is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(b) the pond is properly screened consistent with the requirements in R657-59-15 to prevent the movement of aquatic wildlife into the pond or the movement of any aquaculture product out of the pond;

(c) the aquaculture product is delivered to the pond by a licensed aquaculture facility as defined in Section 4-37-103;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility delivering the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Section 4-37-501 authorizing the aquaculture facility to culture and transport the species of aquaculture product received at the pond;

(e) the species, strain, and reproductive capability of the aquaculture product received is authorized for stocking in the area where the pond is located consistent with the requirements in R657-59-16;

(f) the aquaculture product received is of sufficient size to be incapable of escaping the pond through or around the screen;

(g) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section; and

(h) the owner, lessee, or operator of a private fish pond or an invitee has not previously been found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

R657-59-4. Aquaculture Facility Reporting Requirements.

(1) A person who owns or operates an aquaculture facility shall file an annual report with the division documenting each sale or transfer of live aquaculture product made pursuant to R657-59-3 and R657-59-7 to a private fish pond owner, lessee, or operator.

(2) The report shall contain:

(a) the name, address, and Utah health approval number of the person;

(b) the name, address, and phone number of the private fish pond's owner, lessee, or operator;

(c) the number and weight of aquaculture product by:

(i) species;

(ii) strain; and

(iii) reproductive capability;

(d) date of sale or transfer;

(e) description of the private fish pond location, including UTM coordinates; and

(f) written verification for each live sale or transfer that the private fish pond was inspected and is in compliance with the

requirements of Sections 23-15-10(2) and (3) (c) and this rule.

(3) The report required in this Subsection shall be submitted to and received by the division no later than December 31.

R657-59-5. Certificate of Registration Required.

(1) A certificate of registration must be obtained from the division to receive, stock, or possess an aquaculture product in a private fish pond where:

(a) the aquaculture product is classified under R657-59-16 as an unauthorized species, strain, or reproductive capability for the area where the pond is located;

(b) the aquaculture facility does not deliver the aquaculture product directly to the private fish pond; or

(c) the owner, lessee, or operator of a private fish pond or an invitee is found in violation of any provision of Title 4, Chapter 37 or Title 23 of the Utah Code, or this rule.

(2) A separate certificate of registration is required for each private fish pond as defined under "aquaculture facility" in R657-59-2.

R657-59-6. Application for a Certificate of Registration.

(1) A person may apply to receive a certificate of registration for a private fish pond by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(a) Application forms are available at all division offices and at the division's internet address.

(2) A certificate of registration may be issued after a division representative inspects the private fish pond and confirms that the pond and the aquaculture products requested for stocking in the pond meet all requirements in this rule and Title 23 of the Utah Code.

(3) The application may require up to 30 days for processing.

(4) The division may deny a private fish pond application where:

(a) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(b) the pond is located on a natural lake, natural flowing stream, or a reservoir constructed on a natural stream channel;

(c) the pond is not screened consistent with the requirements in R657-59-15;

(d) the source of the aquaculture product is not an authorized aquaculture facility with a health approval number issued pursuant to Section 4-37-501;

(e) the applicant or its agents or invitees have previously violated of any provision of Title 4, Chapter 37 of the Utah Code, Title 23 of the Utah Code, or this rule;

(f) receiving or stocking the aquaculture product in the pond may:

(i) violate any federal, state or local law or any agreement between the state and another party;

(ii) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(iii) pose an identifiable adverse threat to other wildlife species or their habitat; or

(iv) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives;

(g) the aquaculture product received is sufficiently small to be capable of escaping the pond through or around the screen; or

(h) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening.

(5) An application for private fish pond certificate of registration may not be denied without the review and consent of the division director or a designee.

(6) A private fish pond certificate of registration shall remain effective for 5 years from the date of issuance, unless:

(a) amended by the division at the request of private fish pond owner, lessee, or operator;

(b) terminated or modified by the division pursuant to R657-59-17; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

(7) Certificates of registration are renewable on or before the expiration date identified on the certificate of registration and upon payment of the prescribed handling, and inspection fees.

R657-59-7. Exemption Certificate.

(1) Upon application for a private fish pond certificate of registration and a risk assessment of the pond by the division under R657-59-6, the Division may issue an exemption certificate in lieu of a certificate of registration where the following conditions exist:

(a) The pond is eligible to receive a certificate of registration under the requirements of this chapter;

(b) The pond and species, strain and reproductive capability of aquaculture product requested present no risk to native aquatic wildlife species because:

(i) the location and configuration of the pond physically eliminate the possibility of aquaculture product escaping into the surface waters of the state;

(ii) the pond has no inflow or outflow connection with the surface waters of the state;

(iii) the pond is located in an area where escapement of aquaculture product will cause no ecological damage to native aquatic wildlife species; or

(iv) the pond is located in an area where no Tier I or II aquatic wildlife species on the division's sensitive species list or threatened or endangered species listed under the Endangered Species Act will be threatened by the risk of escapement; and

(c) the aquaculture product is delivered directly to the pond by the aquaculture facility.

(2) The exemption certificate shall have the legal effect of a certificate of registration for purposes of stocking the pond with the species, strain and reproductive capability of aquaculture product authorized in the exemption certificate.

(3) Aquaculture facilities supplying aquaculture product to private fish ponds operating under an exemption certificate shall comply with:

(a) the written terms of the exemption certificate; and

(b) the inspection and reporting requirements in R657-59-4.

(4) The exemption certificate will:

(a) designate the species, strain and reproductive capability of aquaculture product that may be stocked in the pond;

(b) identify any restrictions or conditions relative to stocking and maintaining aquaculture product in the pond;

(c) identify the owner, lessee, or operator of the private fish pond; and

(d) describe the private fish pond's location, including UTM coordinates.

(5) The private fish pond exemption certificate shall remain effective, without the requirement of renewal, for the useful life of the pond, provided:

(a) the ownership of the pond does not change;

(b) the pond, screen, and inflow and outflow structures remain in the same state that existed when inspected;

(c) the species, strain, and reproductive capability of aquaculture product stocked and maintained in the pond remains

consistent with the that authorized in the exemption certificate; and

(d) the exemption certificate is not modified, terminated, or suspended by the division pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 or a court of competent jurisdiction.

(6) Any private fish pond operating under authority of an exemption certificate which is modified, terminated, or suspended pursuant to Section 23-19-9, R657-59-1(3), or R657-59-17 shall be subject to the aquaculture product depopulation requirements in R657-59-8.

R657-59-8. Failure to Renew Certificates of Registration.

(1) If an owner, lessee, or operator of a private fish pond fails to renew the certificate of registration upon expiration, or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquaculture products must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

(2) Aquaculture products in a private fish pond may not be moved alive unless the pond has received disease testing and is issued a health approval number from the Department of Agriculture and Food pursuant to Section 4-37-501.

(3) Aquaculture products from a private fish pond infected with any pathogen specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such pathogen.

R657-59-9. Reporting Requirements for Private Fish Ponds Authorized by Certificate of Registration.

(1) Any person that possesses a certificate of registration for a private fish pond must submit to the division an annual report of all live aquaculture products purchased or acquired during the year. This report must contain the following information:

(a) the name, address, and phone number of the private fish pond's owner, lessee, or operator;

(b) name, address, and certificate of registration number of the seller or supplier;

(c) the number and weight of aquaculture product by:

(i) species;

(ii) strain; and

(iii) reproductive capability;

(d) date of sale or transfer;

(2) A form for this information is provided by the division.

(3) The annual report must be received by the division no later than January 30.

R657-59-10. Importation.

(1)(a) The species, strains, and reproductive capabilities of live aquaculture products that may be imported and stocked in a private fish pond without a certificate of registration are provided in R657-59-16;

(b) A certificate of registration or exemption certificate is required to import and stock all species, strains and reproductive capabilities of live aquaculture products not specifically exempted from licensure in R657-59-16.

(2) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 30 days for action.

R657-59-11. Acquiring and Transferring Aquaculture Products.

(1) Live aquaculture products, other than ornamental fish, may be:

(a) purchased or acquired only from sources that have a valid certificate of registration from the Utah Department of Agriculture and Food to sell such products or from a person located outside Utah if that person is approved by the Utah Department of Agriculture and Food to import the particular aquaculture product; and

(b) acquired, purchased or transferred only from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same entity since each facility is treated separately, regardless of ownership.

(2)(a) Any person who has been issued a valid certificate of registration may transport live aquaculture products as specified on the certificate of registration to the private fish pond.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species; and

(iii) name, address, and certificate of registration number, if applicable, of the destination.

R657-59-12. Inspection of Records and Facilities.

(1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:

(a) records of purchase and acquisition of aquaculture products, including records maintained in connection with the reporting requirements in R657-59-9;

(b) certificates of registration; and

(c) valid identification of stocks.

(2) The division and its authorized representatives may inspect a private fish pond at any time to verify compliance with the requirements of Title 23 of the Utah Code and this rule, and to conduct pathological testing.

R657-59-13. Prohibited Activities.

(1) A private fish pond may not be developed on a natural lake; natural flowing stream; or reservoir constructed on a natural stream channel.

(2) Live aquatic wildlife may not be collected from the wild and placed in a private fish pond.

(3) Any aquaculture product received or held in a private fish pond may not be released from the pond or transported live to another location.

(4) A private fish pond owner, lessee, or operator may not sell, donate, or transfer from the pond live aquaculture product, including gametes and eggs.

R657-59-14. Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to take fish from a legally recognized private fish pond.

(2) A fishing license is not required to transport dead aquaculture product from a private fish pond, provided the person possesses a receipt with the following information:

(a) species and number of fish;

(b) date caught;

(c) certificate of registration number or exemption certificate number of the private fish pond, where applicable; and

(d) name, address, and telephone number of the owner,

lessee, or operator of the private fish pond.

(3) Any person that has a valid fishing license may transport up to a legal limit of dead aquaculture product from a private fish pond without further documentation.

R657-59-15. Screen Requirements.

(1) All inlets and outlets of a private fish pond must be screened as follows to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the pond:

(a) the screen shall be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;

(b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;

(c) screen construction and placement shall eliminate any movement of aquaculture product into or out of the pond;

(d) screen dimensions shall be based on precluding escapement of the size of the fish being stocked;

(e) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and

(f) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.

(2) Ponds with no inlet or outlet to the surface waters of the state are not required to have a screen or device to restrict movement of aquaculture product.

R657-59-16. Species, Strains, and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds Without a Certificate of Registration or Exemption Certificate.

(1) A certificate of registration or exemption certificate must be obtained from the division pursuant to R657-59-6 and R657-59-7 prior to stocking in any private fish pond:

(a) non-salmonid aquaculture product; or

(b) any other species or reproductive capability of aquaculture product not specifically authorized in this Section.

(2)(a) The following subsections designate areas closed to stocking aquaculture product in private fish ponds using a general area identifier such as canyon, creek, spring, or location and then followed by a specific area identifier in the form of hydrologic unit code (HUC) or township and range.

(b) The general area identifier is included for purposes of reference only and may include all or part of the associated drainage.

(c) The HUC or township and range designations constitute the legal descriptions of the actual closed areas.

(3) Certified sterile salmonid aquaculture product may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas:

(a) Washington County - stocking is prohibited in the following areas:

(i) Ash Creek - HUC 150100080405;

(ii) Beaver Dam Wash - HUC 15010010;

(iii) Laverkin Creek - HUC 150100080302;

(iv) Leeds Creek - HUC 150100080906;

(v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;

(vi) Tobin Wash - HUC 150100080802;

(vii) Sand Cove Wash - HUC 150100080801;

(viii) Manganese Wash/Santa Clara River - HUC 150100080804;

(ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;

(x) Cove Wash/Santa Clara River - HUC 150100080809;

(xi) Moody Wash - HUC 150100080603;

(xii) Upper Moody Wash - HUC 150100080602;

(xiii) Magotsu Creek - HUC 150100080704;

(xiv) South Ash Creek - HUC 150100080405) ;

(xv) Water Canyon - HUC 150100080701) ;

(xvi) Chinatown Wash/Virgin River - HUC 150100080508;

(xvii) Lower Gould Wash - HUC 150100080508;

(xviii) Grapevine Wash/Virgin River - HUC 150100080903;

(xix) Cottonwood Wash/Virgin River - HUC 150100080909;

(xx) Middleton Wash/Virgin River - HUC 150100080910;

(xxi) Lower Fort Pierce Wash - HUC 150100080605;

(xxii) Atkinville Wash - HUC 150100080303;

(xxiii) Lizard Wash - HUC 150100080302;

(xxiv) Val Wash/Virgin River - HUC 150100080307;

(xxv) Bulldog Canyon - HUC 150100080310; and

(xxvi) Fort Pierce Wash - HUC 15010009.

(4) Fertile rainbow trout may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas and elevations:

Beaver County - stocking is prohibited in the following:

(i) North Creek - HUCs 160300070203, 160300070208;

and

(ii) Pine Creek (near Sulphurdale) - HUC 160300070501.

(b) Box Elder County - stocking is prohibited in the following:

(i) Morison Creek - HUC 16020308;

(ii) Bettridge Creek - HUC 16020308;

(iii) Death Creek - HUC 16020308;

(iv) Camp Creek - HUC 16020308;

(v) Goose Creek - HUC 17040211;

(vi) Raft River - HUC 17040210;

(vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and

(viii) Mantua Reservoir - HUC 16010204.

(c) Cache County - stocking is prohibited in the following:

(i) Logan River - HUC 16010203;

(ii) Blacksmith Fork - HUC 16010203;

(iii) East Fork Little Bear River - HUC 16010203; and

(iv) Little Bear River - HUC 16010203.

(d) Carbon County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(e) Daggett County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(f) Davis County - no areas closed to stocking fertile rainbow trout.

(g) Duchesne County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(h) Emery County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(i) Garfield County - stocking is prohibited in the following areas:

(i) Birch Creek/Main Canyon - HUC 140700050102;

(ii) Cottonwood Creek - HUC 160300020406;

(iii) East Fork of Boulder Creek/ West Fork Boulder Creek - HUC 140700050206; and

(iv) Ranch Creek (East Fork Sevier River drainage) - HUC 160300020405.

(j) Grand County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(k) Iron County - no areas closed to stocking fertile rainbow trout.

(l) Juab County - stocking is prohibited in the following areas:

(i) Sulphur Wash - HUC 160203011303;

(ii) Middle Pleasant Valley Draw - HUC 160203011402;

(iii) Lower Pleasant Valley Draw - HUC 160203011403;

- (iv) Cookscomb Ridge - HUC 160203011501;
(v) Outlet Salt Marsh Lake - HUC 160203011502;
(vi) Deep Creek Range - HUC 160203011503;
(vii) Snake Valley - HUC 160203011504;
(viii) Little Red Cedar Wash - HUC 160203011505;
(ix) Trout Creek - HUC 160203060101;
(x) Smelter Knolls - HUC 160203060104;
(xi) Toms Creek - HUC 160203060201;
(xii) Goshute Canyon - HUC 160203060202;
(xiii) Indian Farm Creek - HUC 160203060204;
(xiv) Spring Creek - HUC 160203060803;
(xv) Fifteenmile Creek - HUC 160203060804;
(xvi) East Creek/East Deep Creek - HUC 160203060805;
(xvii) East Creek/East Deep Creek - HUC 160203060806;
(xviii) West Deep Creek - HUC 160203060808;
(xix) Horse Valley - HUC 160203060304;
(xx) Starvation Canyon - HUC 160203060305;
(xxi) Cane Springs - HUC 160203060307;
(xxii) Fish Springs Range - HUC 160203060308;
(xxiii) Middle Fish Springs Wash - HUC 160203060309;
(xxiv) Lower Fish Springs Wash - HUC 160203060403;
(xxv) Fish Springs - HUC 160203060405;
(xxvi) Wilson Health Springs - HUC 160203060407;
(xxvii) Vernon Creek - HUC 160203040102;
(xxviii) Outlet Chicken Creek - HUC 160300050206;
(xxix) Little Valley/Sevier River - HUC 160300050403;
(xxx) Pole Creek/Salt Creek - HUC 160202010104; and
(xxxi) West Creek/Current Creek - HUC 160202010107.
- (m) Kane County - no areas closed to stocking fertile rainbow trout.
- (n) Millard County - stocking is prohibited in the following areas:
- (i) Outlet Salt Marsh Lake - HUC 160203011502;
(ii) Sulphur Wash - HUC 160203011303;
(iii) Cookscomb Ridge - HUC 160203011501;
(iv) Tungstonia Wash - HUC 160203011302;
(v) Salt Marsh Lake - HUC 160203011304;
(vi) Indian George Wash - HUC 160203011301
(vii) Outlet Bishop Springs - HUC 160203011203;
(viii) Warm Creek - HUC 160203011204;
(ix) Headwaters Bishop Springs - HUC 160203011202;
(x) Indian Pass - HUC 160203011107;
(xi) Chevron Ridge - HUC 160203011110;
(xii) Petes Knoll - HUC 160203011109;
(xiii) Red Gulch - HUC 160203011102;
(xiv) Horse Canyon - HUC 160203011106;
(xv) Hampton Creek - HUC 160203011105;
(xvi) Knoll Springs - HUC 160203011103;
(xvii) Browns Wash - HUC 160203011101;
(xviii) Outlet Baker Creek - HUC 160203011004;
(xix) Outlet Old Mans Canyon - HUC 160203011003;
(xx) Hendrys Creek - HUC 160203011104;
(xxi) Headwaters Old Mans Canyon - HUC 160203011002;
(xxii) Rock Canyon - HUC 160203011001
(xxiii) Silver Creek - Baker Creek - HUC 160203010806;
(xxiv) Outlet Weaver Creek - HUC 160203010804;
(xxv) Conger Spring - HUC 160203010702; and
(xxvi) Sheepmens Little Valley - HUC 160203010607.
- (o) Morgan County - stocking is prohibited in the following areas:
- (i) Weber River - HUC 16020102;
(ii) East Canyon Creek - HUC 16020102; and
(iii) Lost Creek - HUC 16020101.
- (p) Piute County - stocking is prohibited in the following areas:
- (i) Manning Creek - HUC 160300030203.
(q) Rich County - stocking is prohibited in the following areas:
- (i) Bear Lake including all its tributaries - HUC 16010201;
(ii) Big Creek - HUC 16010101;
(iii) Woodruff Creek - HUC 16010101; and
(iv) Home Canyon and Meachum Canyon (Deseret Ranch) - HUC 16010101.
- (r) Salt Lake County - stocking is prohibited in the following areas:
- (i) Big Cottonwood Canyon Creek - HUC 160202040201;
(ii) Little Cottonwood Canyon Creek - HUC 160202040202;
(iii) Mill Creek - HUC 160202040301;
(iv) Parleys Creek - HUC 160202040302;
(v) Emigration Creek - HUC 160202040303;
(vi) City Creek - HUC 160202040304; and
(vii) Red Butte Creek/Emigration Creek - HUC 160202040306.
- (s) San Juan County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (t) Sanpete County:
- (i) stocking is prohibited in the following areas west of the Manti Mountain Range divide:
- (A) Dry Creek/San Pitch River - HUC 160300040201;
(B) Oak Creek/San Pitch River - HUC 160300040202;
(C) Cottonwood Canyon/San Pitch River - HUC 160300040203;
(D) Birch Creek/San Pitch River - HUC 160300040204;
(E) Pleasant Creek - HUC 160300040205;
(F) Dublin Wash/San Pitch River - HUC 160300040206;
(G) Cedar Creek - HUC 160300040207;
(H) Spring Hollow/San Pitch River - HUC 160300040208;
(I) Upper Oak Creek - HUC 160300040302;
(J) Petes Canyon/San Pitch River - HUC 160300040306;
(K) Uinta Gulch - HUC 160202020201;
(L) Upper Thistle Creek - HUC 160202020202;
(M) Nebo Creek - HUC 160202020203;
(N) Middle Thistle Creek - HUC 160202020204;
(O) Dry Canyon/San Pitch River - HUC 160300040308;
(P) Maple Canyon/San Pitch River - HUC 160300040309;
(Q) Gunnison Reservoir/San Pitch River - HUC 160300040503;
(R) Outlet San Pitch River - HUC 160300040505;
(S) Beaver Creek - HUC 140700020201;
(T) Box Canyon/Muddy Creek - HUC 140700020203;
(U) Skumpah Creek-Salina Creek - HUC 160300030402;
- and
- (V) Headwaters Twelvemile Creek - HUC 160300040402.
(ii) stocking is prohibited in any private fish pond above 7000 feet in elevation east of the Manti Mountain Range divide.
- (u) Sevier County - stocking is prohibited in the following areas:
- (i) Pole Creek (tributary to Clear Creek) - HUC 160300030103;
(ii) Salina Creek - HUC 160300030402; and
(iii) U M Creek - HUC 140700030101.
(v) Summit County - stocking is prohibited in the following areas:
- (i) Bear River and all tributaries - HUC 16010101;
(ii) Mill Creek and all tributaries - HUC 16010101;
(iii) Muddy Creek and Van Tassel Creek - HUC 14040108;
(iv) Little West Fork/Blacks Fork - HUC 14040107;
(v) Black Fork - HUC 14040107;
(vi) Archie Creek - HUC 14040107;
(vii) West Fork Smiths Fork - HUC 14040107;
(viii) Gilbert Creek - HUC 14040107;
(ix) East Fork Smiths Fork - HUC 14040107;
(x) Dahalgreen Creek - HUC 14040106;

- (xi) Henrys Fork - HUC 14040106;
- (xii) Spring Creek and Poison Creek - HUC 14040106;
- (xiii) West Fork Beaver Creek - HUC 14040106;
- (xiv) Middle Fork Beaver Creek - HUC 14040106;
- (xv) Echo Creek - HUC 16020101;
- (xvi) Chalk Creek - HUC 16020101;
- (xvii) Silver Creek - HUC 16020101;
- (xviii) Weber River - HUC 16020101;
- (xix) Beaver Creek - HUC 16020101;
- (xx) Provo River - HUC 16020101;
- (xxi) Kimball Creek - HUC 160201020101;
- (xxii) Big Dutch Hollow/East Canyon Creek - HUC 160201020103;
- (xxiii) Silver Creek - HUC 160201010403; and
- (xxiv) Toll Canyon/East Canyon Creek - HUC 160201020102.
- (w) Tooele County - stocking is prohibited in the following areas:
 - (i) Toms Creek - HUC 160203060201;
 - (ii) Goshute Canyon - HUC 160203060202;
 - (iii) Eightmile Wash - HUC 160203060203;
 - (iv) Indian Farm Creek - HUC 160203060204;
 - (v) Willow Spring Wash HUC 160203060205;
 - (vi) Willow Canyon - HUC 160203080104;
 - (vii) Bettridge Creek - HUC 160203080106;
 - (viii) East Creek/East Deep Creek - HUC 160203060806;
 - (ix) East Deep Creek - HUC 160203060807;
 - (x) West Deep Creek - HUC 160203060808;
 - (xi) Gullmette Gulch/Deep Creek - HUC 160203060902;
 - (xii) Pony Express Canyon/Deep Creek - HUC 160203060904;
 - (xiii) Badlands - HUC 160203060905;
 - (xiv) White Sage Flat/Deep Creek - HUC 160203060907;
 - (xv) Lower Fish Springs Wash - HUC 160203060403;
 - (xvi) Fish Springs - HUC 160203060405;
 - (xvii) Wilson Health Springs - HUC 160203060407;
 - (xviii) East Government Creek - HUC 160203040101;
 - (xix) Vernon Creek - HUC 160203040102; and
 - (xx) Faust Creek - HUC 160203040105.
- (x) Uintah County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
- (y) Utah County - stocking is prohibited in the following areas:
 - (i) Starvation Creek - HUC 160202020101;
 - (ii) Upper Soldier Creek - HUC 160202020102;
 - (iii) Tie Fork - HUC 160202020103;
 - (iv) Middle Soldier Creek - HUC 160202020105;
 - (v) Lake Fork - HUC 160202020106;
 - (vi) Lower Soldier Creek - HUC 160202020107;
 - (vii) Upper Thistle Creek - HUC 160202020202;
 - (viii) Nebo Creek - HUC 160202020203;
 - (ix) Middle Thistle Creek - HUC 160202020204;
 - (x) Lower Thistle Creek - HUC 160202020205;
 - (xi) Sixth Water Creek - HUC 160202020301;
 - (xii) Cottonwood Canyon - HUC 160202020302;
 - (xiii) Fifth Water Creek - HUC 160202020303;
 - (xiv) Upper Diamond Fork - HUC 160202020304;
 - (xv) Wanrhodes Canyon - HUC 160202020305;
 - (xvi) Middle Diamond Fork - HUC 160202020306;
 - (xvii) Lower Diamond Fork - HUC 160202020307;
 - (xviii) Headwaters Left Fork Hobbler Creek - HUC 160202020401;
 - (xix) Headwaters Right Fork Hobbler Creek - HUC 160202020402;
 - (xx) Outlet Left Fork Hobbler Creek - HUC 160202020403;
 - (xxi) Outlet Right Fork Hobbler Creek - HUC 160202020404;
 - (xxii) Upper Spanish Fork Creek - HUC 160202020501;

- (xxiii) Middle Spanish Fork Creek - HUC 160202020502;
- (xxiv) Peteetneet Creek - HUC 160202020601;
- (xxv) Spring Creek - HUC 160202020602;
- (xxvi) Beer Creek - HUC 160202020603;
- (xxvii) Big Spring Hollow/South Fork Provo River - HUC 160202030502;
- (xxviii) Pole Creek/Salt Creek - HUC 160202010104;
- (xxix) Middle American Fork Canyon - HUC 160202010802;
- (xxx) Mill Fork - HUC 160202020104; and
- (xxxi) Upper American Fork Canyon - HUC 160202010801.
- (z) Wasatch County - stocking is prohibited in the following areas:
 - (i) Willow Creek/Strawberry River - HUC 140600040101;
 - (ii) Clyde Creek/Strawberry River - HUC 140600040102;
 - (iii) Indian Creek - HUC 140600040104;
 - (iv) Trout Creek/Strawberry River - HUC 140600040105;
 - (v) Soldier Creek/Strawberry River - HUC 140600040106;
 - (vi) Willow Creek - HUC 140600040301;
 - (vii) Current Creek Reservoir - HUC 140600040401;
 - (viii) Little Red Creek - HUC 140600040402;
 - (ix) Outlet Current Creek - HUC 140600040403;
 - (x) Water Hollow/Current Creek - HUC 140600040404;
 - (xi) Headwaters West Fork Duchesne River - HUC 140600030101;
 - (xii) Little South Fork Provo River - HUC 160202030201;
 - (xiii) Bench Creek/Provo River - HUC 160202030202;
 - (xiv) Lady Long Hollow/Provo River - HUC 160202030203;
 - (xv) Charcoal Canyon/Provo River - HUC 160202030204;
 - (xvi) Drain Tunnel Creek - HUC 160202030301;
 - (xvii) Lake Creek - HUC 160202030302;
 - (xviii) Center Creek - HUC 160202030303;
 - (xix) Cottonwood Canyon/Provo River - HUC 160202030304;
 - (xx) Snake Creek - HUC 160202030305;
 - (xxi) Spring Creek/Provo River - HUC 160202030306;
 - (xxii) Daniels Creek - HUC 160202030401;
 - (xxiii) Upper Main Creek - HUC 160202030403;
 - (xxiv) Lower Main Creek - HUC 160202030404;
 - (xxv) Deer Creek Reservoir-Provo River - HUC 160202030405;
 - (xxvi) Provo Deer Creek - HUC 160202030501;
 - (xxvii) Little Hobbler Creek - HUC 160202030402;
 - (xxviii) Mill Hollow/South Fork Provo River - HUC 160202030104; and
 - (xxix) Mud Creek - HUC 140600040103.
- (aa) Washington County - stocking is prohibited in the following areas:
 - (i) Ash Creek - HUC 150100080405;
 - (ii) Beaver Dam Wash - HUC 150100101;
 - (iii) Laverkin Creek - HUC 150100080302;
 - (iv) Leeds Creek - HUC 150100080906;
 - (v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;
 - (vi) Tobin Wash - HUC 150100080802;
 - (vii) Sand Cove Wash - HUC 150100080801;
 - (viii) Manganese Wash/Santa Clara River - HUC 150100080804;
 - (ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;
 - (x) Cove Wash/Santa Clara River - HUC 150100080809;
 - (xi) Moody Wash - HUC 150100080603;
 - (xii) Upper Moody Wash - HUC 150100080602;
 - (xiii) Magotsu Creek - HUC 150100080704;
 - (xiv) South Ash Creek - HUC 150100080405; ;
 - (xv) Water Canyon - HUC 150100080701; ;
 - (xvi) Chinatown Wash/Virgin River - HUC

- 150100080508;
(xvii) Lower Gould Wash - HUC 150100080508;
(xviii) Grapevine Wash/Virgin River - HUC 150100080903;
(xix) Cottonwood Wash/Virgin River - HUC 150100080909;
(xx) Middleton Wash/Virgin River - HUC 150100080910;
(xxi) Lower Fort Pierce Wash - HUC 150100080605;
(xxii) Atkinville Wash - HUC 150100080303;
(xxiii) Lizard Wash - HUC 150100080302;
(xxiv) Val Wash/Virgin River - HUC 150100080307;
(xxv) Bulldog Canyon - HUC 150100080310; and
(xxvi) Fort Pierce Wash - HUC 15010009.
(bb) Wayne County - no areas closed to stocking fertile rainbow trout.
(cc) Weber County - stocking is prohibited in the following areas:
(i) North Fork Ogden River - HUC 16020102;
(ii) Middle Fork Ogden River and Gertsen Creek - HUC 16020102; and
(iii) South Fork Ogden River and Gertsen Creek - HUC 16020102.

R657-59-17. Division Authority to Restrict Private Fish Ponds.

- (1)(a) Stocking and maintaining aquaculture products in private fish ponds pursuant to this rule is a conditional privilege that is subject to unilateral modification or termination by the division or other competent legal authority.
(b) Those who establish and maintain private fish ponds under this rule do so with the understanding that the laws and regulations governing private fish ponds are subject to change and that such changes may require:
(i) discontinuation of stocking particular species, strains, or reproductive capabilities of aquaculture product in the pond;
(ii) partial or complete depopulation of the aquaculture product in the pond;
(iii) modifications in screen requirements and other structural elements associated with the pond; or
(iv) new restrictions and requirements in connection with operating the pond and maintaining the aquaculture product within it.
(2) The division may unilaterally restrict a private fish pond operating with or without a certificate of registration or exemption certificate from receiving or possessing particular species, strains and reproductive capabilities of aquaculture product previously authorized when stocking or continued possession of the product in the pond:
(a) violates any federal, state or local law or any agreement between the state and another party;
(b) negatively impacts native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;
(c) poses an identifiable adverse threat to other wildlife species or their habitat; or
(d) poses an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives.
(3) Any costs or losses incurred as the result of future modifications to this rule or the operational status of a private fish pond made pursuant to this section, including terminations and depopulations, shall be borne exclusively by the owner, lessee or operator of the private fish pond.

KEY: wildlife, aquaculture, fish
August 21, 2008

23-15-9
23-15-10

R657. Natural Resources, Wildlife Resources.**R657-60. Aquatic Invasive Species Interdiction.****R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(d) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(e) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(f) "Facility" means a structure that is located within or adjacent to a water body

(g) "Infested water" includes all the following:

(i) lower Colorado River between Lake Mead and the Gulf of California;

(ii) Lake Mead in Nevada and Arizona;

(iii) Lake Mohave in Nevada and Arizona;

(iv) Lake Havasu in California and Arizona;

(v) Lake Pueblo in Colorado;

(vi) Lake Pleasant in Arizona;

(vii) San Justo Reservoir in California;

(viii) Southern California inland waters in Orange, Riverside, San Diego, Imperial, and San Bernardino counties;

(ix) coastal and inland waters east of the 100th Meridian in North America; and

(x) other waters established by the Wildlife Board and published on the DWR website.

(h) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(i) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(j) "Water supply system" means a system that treats,

conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(i) "Water supply system" does not include a water body.

R657-60-3. Possession of Dreissena Mussels.

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

R657-60-4. Reporting of Invasive Species Required.

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Dreissena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or

(c) on the division's website at www.wildlife.utah.gov/law/hsp/pf.php.

R657-60-5. Transportation of Equipment and Conveyances That Have Been in Infested Waters.

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water shall:

(a) immediately drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(a) professionally decontaminated; or

(b) stored and self-decontaminated.

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division is contacted and written or electronic authorization received to move the equipment or conveyance to a designated location for professional decontamination.

(4) A person shall not place any equipment or conveyance that has been in an infested water in the previous 30 days into any other water body or water supply system in the state without first decontaminating the equipment or conveyance.

R657-60-6. Certification of Decontamination.

(1) The owner, operator or possessor of a vessel desiring to launch on a water body in Utah must:

(a) verify the vessel and any launching device have not been in an infested water in the previous 30 days; or

(b) certify the vessel and launching device have been

decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in an infested water and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in an infested water.

(3) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(4) It is unlawful under Section 76-8-504 to knowingly falsify a decontamination certification form.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.

(1)(a) If the division detects or suspects a Dreissena mussel is present in a water body, facility, or water supply system, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(b) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will be imposed in order to avoid or minimize disruption of economic and recreational activities.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the status of infestation and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system; and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(a) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection (1), the division may not unilaterally close or restrict a water

supply system infested with Dreissena mussels where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively eradicates or controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

R657-60-9. Control Plan Required.

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) Upon detection of a Dreissena mussel and issuance of a division closure order involving a water body, facility, or water supply system without an approved control plan, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

(a) scope and extent of the infestation;

(b) actions proposed to control the pathways of spread of the infestation;

(c) actions proposed to control or eradicate the infestation;

(d) methods to decontaminate the water body, facility, or water supply system, if possible;

(e) actions required to systematically monitor the level and extent of the infestation; and

(f) requirements and methods to update and revise the plan with scientific advances.

(4) Any post-infestation control plan prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

(2) The Memorandum shall include the following:

(a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;

(b) identification of ports of entry suitable for interdiction operations;

(c) identification of locations at a specific port of entry suitable for interdiction operations;

(d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;

(e) dates and time periods suitable for interdiction efforts at specific ports of entry;

(f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;

(g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;

(h) methods for determining the length, location and dates of interdiction;

(i) training responsibilities for personnel involved in interdiction activities; and

(j) methods for division regional personnel to establish interdiction efforts at ports within each region.

R657-60-11. Penalty for Violation.

A violation of any provision of this rule is punishable as provided in Section 23-13-11.

**KEY: fish, wildlife, wildlife law
August 21, 2008**

**23-27-401
23-14-18
23-14-19**

R671. Pardons (Board of), Administration.
R671-312. Commutation Hearings for Death Penalty Cases.
R671-312-1. Applicability of Rules to Petitioners.

The limitations on the authority of the Board that are imposed by Utah Code Ann. Section 77-27-5 (Supp. 1994) do not apply to a commutation proceeding pertinent to any person sentenced to the death penalty before April 27, 1992. Procedures applicable to commutation hearings of pre-April 27, 1992, death penalty inmates will be governed by Section R671-312-2. Procedures to be used in the commutation hearing of any person sentenced to the death penalty after April 26, 1992, are governed by Section R671-312-3.

R671-312-2. Commutation Procedures Applicable to Inmates Sentenced to Death Before April 27, 1992.

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than seven days after the sentencing court signs a warrant setting a new execution date. The inmate shall mail a copy, by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding shall terminate. If the execution date is stayed during the commutation hearing, the hearing shall continue and the Board shall render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death should be commuted;

(c) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition will include a statement reciting what, if any, new and significant information exists currently and why the information requires a new hearing.

(4) The Board may temporarily stay an execution to fully hear the petition for commutation.

(5) Within seven days of receiving the petition, the State of Utah will have an opportunity to respond. The Attorney General or County Attorney shall send the Board and the petitioner copies of written evidence, names of witnesses, and summary of anticipated testimony that he intends to rely on to rebut petitioner's claim that the sentence of death should be commuted. The Board may request either the petitioner or the state to provide additional information.

(6) The day after receiving the state's response, the Board will hold a pre-hearing conference to limit the number of witnesses that each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(7) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, or the state's representative. The role of the state's representative is limited to rebutting the petitioner's claim and otherwise assisting the Board to determine all facts relevant to the inquiry. The Rules of Evidence do not apply.

(8) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with

Utah Code Ann. Subsection 77-27-8(2). Rule R672-302 "News Media and Public Access to Hearings" will govern access. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(9) The Board will reconvene in open session to announce and distribute its written decision.

R671-312-3. Commutation Procedures Applicable to Persons Sentenced to Death After April 27, 1992.

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than 23 days before the scheduled execution date and shall mail a copy by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding will terminate. If the execution date is stayed during the commutation hearing, the hearing will continue and the Board will render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death is not appropriate due to the specific circumstances pertinent to him;

(c) whether any of the reasons stated as grounds for the have been reviewed in the judicial process;

(d) if new information is alleged, a statement why the information is considered new, why it could not have been reviewed in the judicial process, and why the information is not still subject to judicial review;

(e) if legal or constitutional reasons are claimed, a statement explaining why Utah Code Ann. Section 77-27-5.5(6) does not prohibit the Board from considering the issue; and

(f) if petitioner has received one commutation hearing, the petition shall include a statement explaining what, if any, new and significant information exists that justifies a second hearing; and

(g) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(3) If the Board believes that it cannot consider the claims pursuant to Section 77-27-5.5, it will deny the petition for a hearing, determining that it does not present a substantial issue.

(4) If the Board grants the petition, a commutation hearing shall be scheduled as soon as reasonably possible.

(5) The Board may temporarily stay an execution to fully hear the petition for commutation.

(6) Within seven days of receiving the petition, the Attorney General or County Attorney shall provide to the Board and the petitioner copies of all written evidence, names of witnesses, and summary of anticipated testimony. The Board may request additional information from either side.

(7) The day after receiving the state's response, the Board shall hold a pre-hearing conference to limit the number of witnesses that each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(8) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, and the state's representative. The role of the State's representative is limited to rebutting petitioner's claim that his sentence should be

commuted and otherwise assisting the board to determine all facts relevant to the inquiry and petitioner's claims. The Rules of Evidence do not apply.

(9) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2). Rule R672-302 "News Media and Public Access to Hearings" will govern access. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(10) The Board will reconvene in open session to announce and distribute its written decision.

KEY: capital punishment

November 19, 2003

77-19-7

Notice of Continuation August 14, 2008

Art VII, Sec 12

R671. Pardons (Board of), Administration.**R671-513. Expedited Determination on Parolee Challenge to Probable Cause.****R671-513-1. Expedited Determination on Parolee Challenge to Probable Cause.**

Within seven (7) days of arrest and detention on the warrant, if the parolee wishes to challenge the probable cause determination, the parolee shall submit evidence to substantiate the challenge. At least one member of the Board shall review all the evidence in support of the allegations as well as the parolee's submissions in dispute of the allegations and decide whether probable cause continues to exist. The parolee also shall inform the Board and the parole agent in writing if any evidence needs to be preserved from the locale in which the violation was committed. The writing shall be sufficiently detailed so that the parole agent can easily find the evidence to be preserved.

R671-513-2. Review of Evidence.

Review of the parolee's evidence shall occur no later than 5 days after the parolee has submitted it. If the Board member decides that the probable cause determination was incorrect, the case shall be routed to a majority of the Board for deliberation. If a majority of the Board believes the parolee's evidence negates the finding of probable cause, the warrant shall be withdrawn and the parolee released back on parole. Time spent incarcerated counts toward service of the parole term.

KEY: parole, warrant, hearing**January 1, 1999****Notice of Continuation August 14, 2008**

77-27-11

77-27-27

77-27-28

77-27-29

77-27-30

**R671. Pardons (Board of), Administration.
R671-517. Evidentiary Hearings and Proceedings.
R671-517-1. Evidentiary Hearings and Proceedings.**

When a parolee has entered a not guilty plea to an allegation that parole has been violated and the board wishes to consider the allegation, the Board shall hold an evidentiary hearing unless the parolee has been convicted of a criminal charge and revocation is ordered under R671-518, Conduct of Proceedings when Criminal Charge Results in Conviction.

R671-517-2. Confidentiality.

All hearings are open to the public, unless the Board decides that confidential information must be discussed. Only those portions of the hearing during which confidential information is discussed may be closed. Confidential hearings shall be conducted as set forth in R671-520.

R671-517-3. Notification.

The Board shall notify all parties of the time, date, and place of the hearing and of the disputed allegations(s). In this notification, the parolee shall be notified of his or her right to be represented by an attorney of choice at the parolee's own expense, or such counsel as may be provided by the Board. The notification also shall inform the parolee of the right to confront and cross examine witnesses (absent a showing of good cause for not allowing the confrontation), and the right to present rebuttal evidence.

R671-517-4. Anticipated Witnesses, Documents and Other Evidence.

At least ten (10) days prior to the hearing, unless otherwise directed by the Board, each party shall provide to the other and to the Board a list of anticipated witnesses, documents, and other evidence to be submitted at the hearing, together with a summary of the relevance of each anticipated piece of evidence. Failure to comply with this rule may result in sanctions including, but not limited to, exclusion of the non-disclosed witnesses and evidence.

R671-517-5. Presided Over by a Single Board Member.

The hearing may be presided over by a single Board member or a hearing officer as the Board chairperson designates. The person presiding may, sua sponte, or upon motion of either party, exclude evidence that is irrelevant, unduly repetitious, or privileged in the courts of Utah. The person presiding may further take judicial notice of undisputed facts and may rule on motions offered or pending during the hearing.

R671-517-6. Department of Corrections Bears Burden of Evidence.

The Department of Corrections bears the burden of establishing a parole violation by a preponderance of the evidence. All testimony shall be given under oath. Strict rules of evidence do not apply. Hearsay evidence is admissible and shall be given such weight as the person presiding considers appropriate; however, no finding of guilt shall be based solely on hearsay evidence, except where such evidence would be otherwise permitted in a court of law. The Fourth and Fifth Amendment exclusionary rules do not apply to parole revocation hearings.

R671-517-7. Opening Statements.

At the hearing, each party may make a brief opening statement, beginning with the State. After opening statements, the State presents its evidence. Upon conclusion of the State's case, the parolee may present evidence in response. If the parolee, in his or her defense, raises issues not adequately addressed by the State's case in chief, the person presiding may

allow the State to present rebuttal evidence in response to that issue. Upon conclusion of all evidence, the person presiding may allow each party a brief closing argument.

R671-517-8. Written Submissions.

Any brief or legal memorandum submitted to the board as part of an evidentiary hearing shall be delivered to the board at least ten (10) calendar days prior to the hearing, and shall include proof of service on the opposing party. The opposing party may furnish its written response to any such submissions no later than three (3) calendar days prior to the hearing. Such submissions shall be no longer than ten (10) double-spaced, typed pages, excluding exhibits. Either party may petition the hearing official for permission to exceed these length requirements or shorten these time requirements, and the decision whether to allow this shall rest in the sole discretion of the hearing official.

R671-517-9. Continuances.

All requests to continue a scheduled evidentiary hearing shall be submitted to the board in writing, at least seven (7) calendar days prior to the scheduled hearing, and shall contain either a stipulation of the parties, or a statement of why there is an extraordinary need for continuance and why such a continuance will not prejudice the interests of the other side. The decision to grant or deny a continuance rests in the sole discretion of the hearing official. In the event a continuance is granted, each party shall be responsible for notifying its own witnesses.

KEY: parole, evidentiary, hearings

October 25, 2007

Notice of Continuation August 14, 2008

77-27-5

77-27-9

77-27-11

R671. Pardons (Board of), Administration.**R671-518. Conduct of Proceedings When a Criminal Charge Results in Conviction.****R671-518-1. Conduct of Proceedings When a Criminal Charge Results in Conviction.**

If a parolee has been convicted of a new crime, the Board may revoke parole upon receipt of verification of conviction. The Board need not hold an evidentiary hearing even if the parolee continues to deny guilt. It is sufficient that a trial court has adjudicated guilt.

KEY: parole, conviction, criminal charges
November 19, 2003

77-27-5

Notice of Continuation August 14, 2008

77-27-9

77-27-11

R671. Pardons (Board of), Administration.**R671-519. Proceedings When Criminal Charges Result in Acquittal.****R671-519-1. Proceedings When Criminal Charges Result in Acquittal.**

If the basis for revocation proceeding is a criminal charge in which the parolee was acquitted, the parole agent or representative of the State may submit as its sole evidence the transcript from the criminal trial. If the parolee believes submission on the transcript is insufficient, the parolee shall inform the Board of any objection and provide a rationale for the objection. Nevertheless, a trial at which the parolee was represented by counsel is presumed sufficient for the hearing official to determine by a preponderance of the evidence whether parole was violated.

R671-519-2. Evidence Explanation.

Both parties may file memoranda explaining how the evidence provided at the trial either did, or did not, provide sufficient evidence, under a preponderance standard, for finding a parole violation. Such memoranda shall not exceed ten (10), double-spaced, typed pages in length (excluding exhibits), except in cases where the board has granted leave to exceed this limit.

R671-519-3. Personal Appearance.

A personal appearance hearing is not required under this rule for purposes of arguing the evidence. However, if, after reviewing the transcripts and memoranda, the hearing official concludes that parole has been violated, a personal appearance hearing may be held for purposes of determining disposition and listening to any victim comments.

KEY: parole, acquit, hearings**October 25, 2007****Notice of Continuation August 14, 2008**

77-27-5

77-27-9

77-27-11

R671. Pardons (Board of), Administration.**R671-520. Treatment of Confidential Testimony.****R671-520-1. Treatment of Confidential Testimony.**

Confidential testimony shall be admitted at an evidentiary hearing on an alleged parole violation under the following three-part procedure:

1. The State shall make a specific, written preliminary showing of good cause for the testimony to be received in camera.

2. Upon a finding of just cause for confidentiality, the Board shall conduct an in camera inspection of the witness, the proffered testimony, and any supporting testimony to determine:

- a. the credibility and veracity of the witness;
- b. the overall reliability of the testimony itself; and
- c. whether keeping the information confidential will substantially impair the parolee's due process rights to notice of the evidence or to confront and cross-examine adverse witnesses.

If the Board is satisfied with these three aspects, it shall receive the testimony and give it whatever weight it considers appropriate. An electronic record shall be made of this in camera proceeding.

3. A summary of the testimony taken in camera shall be prepared for disclosure to the parolee, informing the parolee of the general nature of the testimony received in camera but without defeating the good cause found by the Board for treating the information confidentially. This summary shall be presented on the record at the public evidentiary hearing and the parolee shall be given an opportunity to respond.

KEY: parole, confidential testimony, hearings**October 10, 2007**

77-27-5

Notice of Continuation August 14, 2008

77-27-9

77-27-11

R671. Pardons (Board of), Administration.**R671-522. Continuances Due to Pending Criminal Charges.****R671-522-1. Continuances Due to Pending Criminal Charges.**

The board may, in its discretion, continue hearings to allow for adjudication of new criminal charges.

R671-522-2. Notification and Verification.

If the Board determines that pending charges warrant a continuance of a hearing, the Board will notify the offender in writing and the reasons for doing so. When the Board receives verification that the criminal charges have been resolved, the hearing will be rescheduled as soon as practical.

KEY: parole, continuing, hearings**October 10, 2007**

77-27-5

Notice of Continuation August 14, 2008

77-27-9

77-27-11

R708. Public Safety, Driver License.**R708-2. Commercial Driver Training Schools.****R708-2-1. Authority.**

This rule is authorized by Section 53-3-505.

R708-2-2. Purpose.

Sections 53-3-501 through 509 require the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of these schools. Rule R708-2 assists the division in implementing these sections.

R708-2-3. Definitions.

(1) "Crime of moral turpitude" means an offense under the statutes of this state or any other jurisdiction, which under the rules of evidence may be used to impeach a witness or includes:

- (a) theft;
- (b) tax evasion;
- (c) issuing bad checks;
- (d) deceptive business practices;
- (e) perjury;
- (f) extortion;
- (g) falsifying government records;
- (h) receiving stolen property;
- (i) sex offenses;
- (j) driving under the influence and alcohol related reckless driving;
- (k) assault; and
- (l) domestic violence offenses.

R708-2-4. Testing Only School Limitations.

(1) A testing only school may conduct behind-the-wheel or observation instruction, or both, upon approval by the division.

(2) A testing only school may not engage in education or training of persons, either practically or theoretically, to drive motor vehicles except under one of the following circumstances:

- (a) when counseling the driver following a test in reference to errors made during the administration of the test; or
- (b) when conducting behind-the-wheel or observation instruction as approved by the division.

(3) A tester may not test an individual who has completed any behind the wheel or observation instruction through the testing only school with which the tester is employed.

R708-2-5. Licensing Requirement for a Commercial Driver Training School.

(1) Every corporation, partnership or person who owns a commercial driver training school shall obtain a license from the division. Commercial driver training school license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. Commercial driver training School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each commercial driver training school shall be inspected by a division representative before it can be licensed.

(2) A license expires one year from the date of issued. The fee for an original license is \$100. The annual fee for a renewal license is \$100. The annual fee for each branch license is \$30. Fees shall be payable to the Department of Public Safety. When a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$10. A notarized affidavit setting forth the date the license was lost or destroyed and the

surrounding circumstances shall be submitted to the division.

(5) When any commercial driver training school or branch office is discontinued, the commercial driver training school or branch office license shall be surrendered to the division within five days. The licensee shall state in writing the reason for the surrender.

(6) Any branch office or classroom facility in a location other than the commercial driver training school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the commercial driver training school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they may be licensed.

(7) Before becoming licensed, each commercial driver training school shall employ a licensed operator to operate the commercial driver training school and each branch office. The current licensed operator shall be identified on the application maintained by the division for each commercial driver training school or branch office. A single operator may operate multiple branch offices of the same school. When the operator discontinues employment with the commercial driver training school, a new operator shall be employed before continuation of operations and the operations of any branch offices for which the individual has been identified as the operator.

(a) An individual may not be employed with more than one commercial driver training school or testing only school at a time.

(8) Unless one school has been designated by the division as a testing only school, two or more schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.

(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification.

R708-2-6. Licensing Requirement for a Testing Only School.

(1) Every corporation, partnership or person who owns a testing only school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it may be licensed.

(2) A license expires one year from the date of issue. The fee for an original license is \$100. The annual fee for a renewal license is \$100. The annual fee for each branch license is \$30. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$10. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

(5) When any school or branch office is discontinued, the school or branch office shall surrender its license to the division within five days. The licensee shall state in writing the reason for surrender.

(6) Any branch office in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's

principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. A division representative shall inspect branch offices before they may be licensed.

(7) An individual may not be employed with more than one commercial driver training school or testing only school at a time.

(8) Unless one school has been designated by the division as a testing only school, two schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.

(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification

(10) It is not required that a testing only school maintain a classroom facility in the school or branch office location. A testing only school location and branch office shall have a designated area in which to maintain required files and records.

R708-2-7. Application for a Commercial Driver Training School License or a Testing Only School License.

(1) Application for an original or renewal commercial driver training school license or a testing only school license shall be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application shall be signed by each partner.

(2) In the case of a corporation, the application shall be signed by an officer of the corporation. Applications must be submitted at least 60 days prior to licensing. An appointment shall be made when the application is filed to have the school inspected by a division representative.

(3) Every application shall be accompanied by the following supplementary documents:

(a) samples of each form, receipt, and curriculum to be used by the school;

(b) a schedule of fees for each services to be performed by the school;

(c) a fingerprint card for each applicant, partner or corporate officer. A Bureau of Criminal Identification check shall be done by the division on each applicant, partner, and corporate officer. Applicants are responsible for paying the cost associated with the criminal history check. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint cards and pay the cost associated with the criminal history check;

(d) a certificate of insurance for each vehicle used for driver training or testing purposes;

(e) a copy of each test and criterion, with answers, that the school requires in order for a student to satisfactorily complete the driver training course which are subject to approval of the division; including copies of translations;

(f) evidence that a surety bond has been obtained by the school in compliance with Section R708-2-8; and

(g) a certified copy of a certificate of incorporation as required in a case of a corporation.

(4) The division may require that a credit check be performed for each applicant. Based on the results of the credit check, the division may deny certification.

R708-2-8. Surety Bond Requirements.

(1) The amount of the surety bond shall be determined by the division with the use of a formula that incorporates the number of students that the school is capable of instructing over a period of three months based on its facility, equipment, personnel, and the tuition that would be collected from each student, with a minimum requirement of \$5,000 coverage and a

maximum requirement of \$60,000 coverage.

(2) When, at any time, there is a change in the number of instructors, the number of vehicles, or the size of the classroom facility, the division shall reevaluate the amount of the required surety bond and adjust it accordingly.

(3) Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license. A school designated by the Department of Public Safety as a testing only school may not be required to obtain a surety bond unless it has been authorized by the division to conduct behind-the-wheel training.

(4) A school that does not charge tuition for driver education is not required to maintain a surety bond.

R708-2-9. Application Requirements for a Commercial Driver Training School Instructor License.

(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an instructor's license from the division. This license shall be valid only for the specific driver training school listed on the license.

(2) A license expires one year from issue date. The fee for an original license is \$30. The annual fee for a renewal license is \$20. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or refused renewal, no part of the fee shall be refunded.

(3) Licenses are not transferable.

(4) When an instructor license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$6. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

R708-2-10. Application Requirements for a Commercial Driver Training School Operator License.

(1) Every person who serves as an operator of a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an operator license from the division. This license shall be valid only for the specific driver training school listed on the license.

(2) A school operator license is not valid unless accompanied by a valid instructor license.

(a) Requirements for licensure as a school operator include:

(i) six college semester credit hours;

(ii) eight college quarter credit hours in business related courses through an accredited college or university;

(iii) two years experience operating a business; or

(iv) any combination thereof.

(b) An applicant for operator shall submit evidence by form of transcripts or resume as proof of this requirement.

(c) Each potential school operator shall submit to the division a business plan. The plan shall contain written acknowledgement of reading, understanding, and a willingness to comply with Rule R708-2. The plan shall also describe how the school will meet the requirements of R708-2. The division shall approve the business plan prior to licensure.

(d) Individuals functioning in the capacity of a commercial driver training school operator prior to January 1, 2003, shall not be required to comply with Subsection R708-2-10(2)(c).

(3) An expired license expires one year from the date issued.

(4) Licenses are non-transferable.

(5) When an operator license is lost or destroyed, a duplicate shall be issued upon request. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

R708-2-11. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor shall:

- (a) have a valid Utah driver license;
- (b) be at least twenty one years of age;
- (c) have at least three years of driving experience in the United States, Canada, or a country with which the state of Utah has established a license reciprocity agreement;
- (d) have a driving record free:
 - (i) of a conviction for a moving violation; or
 - (ii) of a chargeable accident resulting in suspension or revocation of the driver license during the two year period immediately prior to application and during employment;
- (e) be checked to determine if there is an unsatisfactory driving record in any state;
- (f) be in acceptable physical condition as required by Section 12;
- (g) complete specialized professional preparation in driver safety education consisting of at least 21 quarter hours, or 14 semester hours of credit as approved by the division. Of the 21 quarter hours or 14 semester hours, one class shall be in teaching methodology and another class shall include basic driver training instruction or organization and administration of driver training instruction;
- (h) pass a written test given by the division which may cover the following:
 - (i) commercial driver training school rules;
 - (ii) traffic laws;
 - (iii) safe driving practices;
 - (iv) motor vehicle operation;
 - (v) teaching methods and techniques;
 - (vi) statutes pertaining to commercial driver training schools;
 - (vii) business ethics;
 - (viii) office procedures and record keeping;
 - (ix) financial responsibility;
 - (x) no fault insurance;
 - (xi) procedures involved in suspension or revocation of an individual's driving privilege;
 - (xii) material contained in the "Utah Driver Handbook"; and
 - (xiii) traffic safety education programs;
- (i) pass a practical driving test;
- (j) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and
- (k) submit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

(2) Commercial driver training schools shall be responsible for sponsoring, controlling, and supervising the actions of instructors.

(a) No school may knowingly employ any instructor if the instructor has been convicted of or there are reasonable grounds to believe that the instructor has committed a felony or a crime of moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind-the-wheel or classroom instruction.

R708-2-12. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license shall be made on forms provided by the division, signed by the applicant and notarized. Applications shall be submitted at least 60 days prior to licensing.

(2) The original and each yearly renewal application shall be accompanied by a medical profile form provided by the division and completed by a health care professional as defined

in Subsection 53-3-302(2).

(3) The medical profile form shall indicate any physical or mental impairments that may preclude service as a commercial driver training school instructor. The physical examinations shall take place no earlier than three months prior to application.

(4) The commercial driver training school desiring to employ the applicant as an instructor shall sign the application verifying that the applicant is employed by the school.

(5) When deemed necessary by the division, an applicant seeking to renew an instructor's license may be required to take a driving skills test.

(6) When deemed necessary by the division, an applicant seeking to renew an instructor license may be required to resubmit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

R708-2-13. Additional Training Requirements.

All holders of school licenses, operator licenses, and instructor licenses may at the discretion of the division be required to attend training by the division regarding new statutes or rules.

R708-2-14. Classroom and Behind-The-Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Each classroom session shall be numbered to be identified on the student record. Classroom curriculum may not be repeated in any of the nine sessions provided to a student except in the form of a review of materials covered in a previous classroom session.

(a) The time frame allotted for review is not to exceed 10 ten minutes per classroom session. Not more than five of the classroom hours may be devoted to showing slides or films. Instructors shall not use or do anything that may distract their attention away from the classroom instruction. For example, use of phones or other electronic devices, reading, sleeping, or helping walk-in customers while conducting any classroom training.

(b) Classroom instruction shall cover the following areas:

- (i) attitudes and physical characteristics of drivers;
- (ii) driving laws with special emphasis on Utah law;
- (iii) driving in urban, suburban, and rural areas;
- (iv) driving on freeways;
- (v) basic maintenance of the motor vehicle;
- (vi) affect of drugs and alcohol on driving;
- (vii) motorcycles, bicycles, trucks, and pedestrian's in traffic;

(viii) driving skills;

(ix) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(x) suspension or revocation of a driver license.

(2) Behind-the-wheel includes instruction a student receives while driving a commercial driver training vehicle or while operating a driving simulator. Instruction shall include a minimum of six hours of instruction in a dual-control vehicle with a licensed instructor. Each student shall be limited to a maximum of two hours of behind-the-wheel instruction per day. An instructor may not conduct more than ten hours of behind-the-wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off-duty time between each ten hour shift.

(a) The instructor and no more than one student shall occupy the front seat of the vehicle. Under no circumstances shall there be more than five individuals in the vehicle. Instructors shall not use or do anything that may distract their attention away from the student driver. Instructors may not use cellular phones or other electronic devices, read, sleep, or

engage in other similar distracting behaviors while conducting behind-the-wheel training.

(b) behind-the-wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions;

(c) students shall receive experience in driving on urban streets, open highways, or freeways. Behind-the-wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians;

(d) students may receive behind-the-wheel training in a driving simulator. If the simulator is fully interactive the student will receive behind-the-wheel training in the ratio of two hours driving the simulator and receive one hour of behind-the-wheel driving. If the simulator is non-fully interactive the student will receive behind-the-wheel training in the ratio of four hours driving the simulators and receive one hour of behind-the-wheel driving. An instructor shall be present at all times during all simulator training. The division shall approve all simulators prior to training.

(e) each student will be limited to a maximum of either two hours of behind-the-wheel instruction or two hours of simulation instruction per day;

(f) students shall receive a minimum of six hours of observation time to observe the instructor, other student drivers and other road users. This instruction may include instructor demonstrations, for which hour for hour credit will be given, and may not exceed two hours per day. Students observing from the rear seat, as well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind-the-wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems;

(g) behind-the-wheel instruction may not be conducted for a student unless the student has been issued a learner permit by the division or the student is in possession of a valid Utah driver license, a temporary permit issued by the division, or a valid out of state or out of country driver license; and

(h) while conducting behind-the-wheel instruction, students and instructors shall adhere to any driving restrictions listed on the learner permit.

(3) All classroom and behind-the-wheel instruction shall be conducted by an individual who is licensed as a commercial driver training school instructor as specified in Rule R708-2.

(a) Unless the division grants approval to a commercial driver training school to provide classroom instruction from an unlicensed expert, such as a police officer on a limited basis, the school may not conduct classroom or behind-the-wheel instruction or allow another individual to conduct classroom or behind-the-wheel instruction without an instructor's license.

(4) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook may not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the commercial driver training schools from the division.

R708-2-15. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section R708-2-11 provided an institution of higher learning and the division approve the course.

(2) An institution of higher learning shall direct any operations of an extended learning course. The institution of higher learning shall notify the division in writing when it has approved a commercial driver training school's extended learning course. The institution of higher learning will monitor any approved extended learning course to ensure the course runs as originally planned.

(a) The institution of higher learning shall notify the division of any substantive changes in the course as well as any approval of changes. The institution of higher learning may approve the extended learning course of more than one commercial driver training school.

(3) An extended learning course shall consist, at a minimum, of:

- (a) a text;
- (b) a workbook; and

(c) a 50 question competency test that addresses the subjects described in Subsection R708-2-11.

(4) All materials, including texts, workbooks, and tests, used in the course shall be submitted by the commercial driver training school to the division for approval.

(5) The average study time required to complete the workbook exercises shall meet or exceed 30 hours.

(6) An extended learning student must complete all workbook exercises.

(7) An extended learning student shall pass the 50 question written competency test with a score of 80% or higher.

(8) Testing shall occur under the following conditions:

(a) the extended learning student shall take the test at the commercial driver training school or proctored testing facility approved by the division;

(b) the identity of the extended learning student shall be verified by the licensed instructor prior to testing;

(c) the extended learning student shall complete the test without any outside help;

(d) the commercial driver training school shall maintain, at least, three separate 50- question competency tests created from a test pool of at least 200 questions;

(e) the extended learning student shall be given a minimum of three opportunities to pass the test. After each failure, the commercial driver training school or approved proctored testing facility shall provide the student with additional instruction to assist the student to pass the next test;

(f) the original fees for the course shall include the three opportunities to pass the test and any additional instruction required;

(g) an extended learning student shall pass the test in order to complete driver training; and

(h) the commercial driver training school shall maintain for four years records of all tests administered. Test records shall include the results of all tests taken by every student.

R708-2-16. Completion Certificates.

(1) Upon completion of the requirements of the driver training course, the commercial driver training school shall release to the student a form consisting of a certificate of training and a certificate of completion that shall be signed by the instructor.

(2) The student shall present the certificate of completion to the division when the student makes application for a driver license.

(3) Duplicate certificates of completion may be obtained for \$5.

(4) After the division has provided notice to a commercial driver training school of intent for agency action to occur, it is a violation of Rule R708-2 for the commercial driver training school to allow students to enroll in a driver training course to accept money from students.

(5) In the event the division revokes or refuses licensure

renewal to the commercial driver training school, access to the division record keeping program will be denied immediately.

R708-2-17. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:

- (a) functioning dual control brakes;
- (b) outside and inside mirrors for the driver for the purpose of observing rearward;
- (c) inside mirror for the instructor, for the purpose of observing rearward;
- (d) a separate seat belt for each occupant;
- (e) functioning heaters and defrosters; and
- (f) a functioning fire extinguisher, first aid kit, safety flares and reflectors.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The commercial driver training school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces, tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Vehicles shall be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the revocation of the license of the commercial driver training school operating the vehicle. The division may require additional safety testing of the vehicle in addition to the state safety inspection. The commercial driver training school will be responsible for any additional costs that may be assessed.

(5) Vehicles unable to meet safety standards shall be replaced by the commercial driver training school.

(6) It is the responsibility of the commercial driver training school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.

(7) Each vehicle used by a commercial driver training school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertising the commercial driver training school shall be approved by the division and should not distract from the words "STUDENT DRIVER".

R708-2-18. Notification of Accident.

If any driver training vehicle is involved in an accident during the course of instruction, the commercial driver training school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-19. Insurance.

(1) Each commercial driver training school or testing only school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah. Each commercial driver training school or testing only school shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.

(2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of the insurance.

Operation of a vehicle without the required minimum insurance coverage shall be grounds for revocation of the license.

R708-2-20. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the commercial driver training school and the student.

(a) Both the student and a representative of the commercial driver training school authorized to enter into a contract and listed on the application shall sign the contract. When the student is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any instruction.

(2) A copy of the contract shall be given to the student and the original retained by the commercial driver training school.

(3) The commercial driver training school shall provide the student with a receipt upon payment. The commercial driver training school shall maintain a copy of all receipts.

R708-2-21. Records.

(1) Each commercial driver training school shall use the division's record keeping computer program to maintain the following:

(a) records for all students showing name, date of birth, type of training, date, exact time of day for the beginning and ending of all training administered;

(b) names of the instructors giving lessons or instruction; and

(c) identification of the vehicle license plate number or simulator in which any behind-the-wheel and observation instruction is given.

(2) Records shall be updated within 24 hours of instruction for each student.

(a) maintain original copies of the student contracts and receipts, current vehicle insurance information, and surety bond information;

(3) Each commercial driver training school:

(a) shall maintain accurate and current records;

(b) shall review the records of all schools at least annually; and

(c) may observe the instruction given both in the classroom and behind the wheel.

(4) The division shall review the operation of the commercial driver training school when the division deems necessary.

(5) The loss or destruction of any record that a commercial driver training school is required to maintain shall be immediately reported by affidavit stating:

(a) the date the record was lost or destroyed; and

(b) the circumstances involving the loss or destruction.

(6) The commercial driver training school shall retain all records for four years.

(7) When deemed necessary by the division, the commercial driver training school shall make the records available for the purpose of conducting an audit.

(a) When making the records available for audit purposes, the division shall provide a receipt to the commercial driver training school operator which will include:

(i) the name and location of the commercial driver training school;

(ii) the date of removal of records;

(iii) information that specifies all records removed;

(iv) the signature of the operator; and

(v) the signature of a division representative.

(8) Upon return of the records, the receipt shall be updated to reflect the date the records were returned, the signature of the operator, and the signature of the division representative

returning the records.

(9) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience.

(a) Each commercial driver training school shall provide all records to the division immediately upon request for the purpose of an audit or review. When a hearing occurs subsequent to an audit, records not provided by the commercial driver training school at the time of the audit may not be considered as evidence during the hearing.

R708-2-22. Advertising and School Location.

(1) Commercial driver training schools and testing only schools may not imply or expressly guarantee that a driver license is assured. The display of a sign such as "Driver License Secured Here" is prohibited.

(2) A commercial driver training school or testing only school may display on its premises a sign reading, "This School is Licensed by the State of Utah."

(3) No commercial driver training school or testing only school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school or testing only school if the school's place of business is located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public. When either school is established in a location prior to the origination of a facility located within 1500 feet of the school in which vehicle registrations or driver licenses are issued to the public, the school may continue operation. However, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

(5) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

(6) Each commercial driver training school shall provide classroom space, either in its own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, including blackboards, charts, and projectors. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

(7) No commercial driver training school or testing only school may use any Department of Public Safety, Driver License Division logos, letterhead, or license recreations as part of their advertising.

R708-2-23. Change of Address, Employees, and Officers.

(1) A commercial driver training school or testing only school shall immediately notify the division in writing when there is any change in residence or business address of owner operator, partner, officer, or employee of the school.

(2) The commercial driver training testing only school shall immediately notify the division in writing when there is any change in the owner or the operator and shall provide the same information that would be required on an original application by the corporation.

(3) Failure to notify the division of any change of address, of the owner or the operator is grounds for revocation of the school license.

(4) The commercial driver training school or testing only school shall immediately notify the division in writing of any employee no longer employed by the school. Failure to notify the division of change is grounds for revocation.

R708-2-24. Change in Ownership.

(1) When any ownership change occurs in the commercial driver training school or testing only school, the school shall immediately notify the division in writing by the new owner and a new application shall be submitted.

(a) An application shall be considered a renewal when one or more of the original licensees remain part owner of the school. When the change in ownership involves a new applicant not named in the application for the last current license or renewal license of the school, the license shall be considered a new application.

(2) The division may permit continuance of the commercial driving training school or testing only school by the current licensee, pending processing of the application made by the new applicant to whom ownership of the school is to be transferred.

(3) Upon issuance of the new license, the prior license shall be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-25. Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License.

(1) Following a hearing, the division may revoke, place on probation, or refuse to renew a license for either an instructor or operator of a commercial driver training school or a testing only school.

(a) The division may also refuse to issue a license for an instructor, operator, commercial driver training school or a testing only school.

(b) A license may be revoked, placed on probation or refused for renewal for any of the following reasons:

(i) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5 Commercial Driver Training Schools Act;

(ii) failure to comply with any of the provisions of Rule 708-2;

(iii) cancellation of surety bond as required in Subsection R708-2-8;

(iv) providing false information in an application or form required by the division;

(v) violation of Subsection R708-2-11 pertaining to moving violations or an accident that results in a suspension or revocation of a driver license;

(vi) failure to permit the division or its representatives to inspect any school classroom, record, or vehicle used in instruction;

(c) conviction of a felony, or conviction of or reasonable grounds to believe an instructor has committed, a crime of moral turpitude;

(d) conviction of a felony, or conviction of or reasonable grounds to believe any licensee has committed a crime of moral turpitude; and

(i) failure to appear for a hearing on any of the above charges.

(2) Any proceeding to revoke, place on probation, or refuse to issue or renew an instructor license, operator license, commercial driver training school license or a testing only school license is an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.

(3) Any licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation. The applicant shall complete an application for an original license and meet all applicable requirements for an original license. In addition to the other fees provided in Subsection R708-2-5, the licensee shall be required to pay a \$75 reinstatement fee for each license revoked to the division upon application for reinstatement.

(a) Upon receipt of a completed application for an instructor license, operator license, commercial driver training

school license or a testing only school, and applicable documentation and fees, the division shall conduct a review process as established by the division director in order to determine eligibility for reinstatement or re-licensure.

(b) Notice of final decision shall be in writing by the division within twenty days of receipt of evidence that all requirements have been met for reinstatement or re-licensure.

(c) When a request for reinstatement is denied, the applicant shall have an opportunity to request a hearing in writing within five days of receipt of the final decision of the division.

R708-2-26. Procedures Governing Informal Adjudicative Proceedings.

(1) The following procedures will govern informal adjudicative proceedings:

(a) the division shall commence an action to revoke, place on probation, or refuse to issue or renew a license by the issuance of notice of agency action. The notice of agency action shall comply with the provisions of Subsection 63G-4-201;

(b) no response is required to the notice of agency action;

(c) an opportunity for a hearing shall be granted on a revocation, probation or refusal to issue or renew a license when the division receives in writing a proper request for a hearing;

(d) the division will send written notice of a hearing to the licensee or applicant at least ten days prior to the date of the hearing;

(e) no discovery, either compulsory or voluntary, shall be permitted prior to the hearing except that all parties shall have access to information in the division's files, and to investigator information and materials not restricted by law;

(f) the division shall designate an individual or panel to conduct the hearing; and

(g) within twenty days after the date of the close of the hearing or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision which shall constitute final agency action. The decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Subsection 63G-4-302, notice of right of judicial review under Subsection 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(2) A commercial driver training school, after being notified of the division's intent to take action, may not transfer any contracts, records, properties, training activities, obligations, or licenses to another party.

(3) If a commercial driver training school license is revoked, placed on probation or refused renewal, the existing classroom, behind-the-wheel, and observation training hours may not be transferred to another school for completion.

(4) If a commercial driver training school license is revoked or refused renewal under the emergency provisions of the school shall not be authorized to conduct business unless otherwise determined at a hearing.

(5) If an instructor license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an instructor employed by the school with a valid instructor license ensures operation does not compromise public safety.

(6) If an operator license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an operator employed by the school with a valid operator license ensures operation does not compromise public safety.

(7) An instructor license, operator license, commercial driver training school license or a testing only school license may be placed on probation upon approval of the director of the

division or designee.

(a) Any licensee placed on probation shall be subject to a period of close supervised probation conditions to be determined by the division. During a period of probation, provided that the terms of the probation agreement are adhered to by the probationer licensee. The instructor license, operator license, commercial driver training school license or a testing only school license shall remain intact and the instructor, operator, or school will be allowed to continue operation.

KEY: driver education, schools, rules and procedures

August 8, 2008

53-3-505

Notice of Continuation March 2, 2007

R708. Public Safety, Driver License.**R708-16. Pedestrian Vehicle Rule.****R708-16-1. Authority.**

- (1) This rule is authorized by Section 41-6a-1011.

R708-16-2. Purpose.

(1) To promote and regulate safety in the use of a pedestrian vehicle, for both the individual using the pedestrian vehicle, and any person or property around, or about, the area being used by a pedestrian vehicle. Specific conditions may be required prior to giving authorization to operate a pedestrian vehicle.

(2) To require a person to apply for authority to operate a pedestrian vehicle for any such vehicle with an excess of .5 brake horsepower capable of developing a speed of more than 8 mph and being used in an area other than a sidewalk or places where pedestrians are allowed.

(3) To review on an individual basis each application for authorization to operate a pedestrian vehicle according to need of the physically disabled person and pursuant to and in accordance with applicable rules adopted by the commissioner for the Department of Public Safety.

R708-16-3. Application and Requirements for Authorization to Operate a Pedestrian Vehicle.

(1) Application for authorization to operate a pedestrian vehicle shall be made at any field office of Driver License Division and shall require the following:

- (a) Name, age and D.O.B., sex, address, description of disability.
- (b) Type of pedestrian vehicle to be used must comply with the requirements specified in Section 41-6a-1011.
- (c) Statement of intended use of the pedestrian vehicle. Intended use should not create an undue safety hazard.
- (d) A functional ability evaluation and a medical opinion that physical disability would not affect the safe operation of the pedestrian vehicle.
- (e) All applicants must sign a waiver accepting all responsibility for being allowed to operate a pedestrian vehicle.
- (f) Any physically disabled person, under the age of 18, must have parental or guardian approval and sign a waiver accepting responsibility for being allowed to operate a pedestrian vehicle.
- (g) Each individual making application for use of a pedestrian vehicle must demonstrate his/her ability to safely operate the pedestrian vehicle.

(2) Authorization to operate a pedestrian vehicle shall be in the form of a certificate issued by the department.

(3) Operation of pedestrian vehicles must comply with all pedestrian, bicycle, or vehicle traffic laws as applicable to the type of pedestrian vehicle used. This includes lighting requirements if used during hours of darkness.

(4) The department may inspect intended routes and uses of vehicles and apply restrictions on use of pedestrian vehicles as may be necessary for the preservation of public safety.

(5) Authorization to operate a pedestrian vehicle must be reviewed every five years.

R708-16-4. Special Requirements for Operation of a Pedestrian Vehicle.

(1) Passengers are prohibited on pedestrian vehicles except that one passenger, as designated by the department and indicated on the pedestrian vehicle authorization document, may be allowed if inclusion of the passenger does not create a negative effect on the safe operation of the pedestrian vehicle, and if the pedestrian vehicle is designed to accommodate a passenger.

(2) Every pedestrian vehicle must display a Standard International "Handicapped" emblem inset on a standard slow

moving vehicle designation.

(3) The department may require other markings or equipment as may be determined on an individual basis.

R708-16-5. Fee.

(1) The department may charge a \$13 fee to cover administrative costs of issuing a permit to operate a pedestrian vehicle.

(2) All fees collected for permits shall remain in the department as a dedicated credit.

R708-16-6. Denial, Suspension, and Revocation of Authorization to Operate a Pedestrian Vehicle.

(1) Authorization to operate a pedestrian vehicle may be denied, suspended or revoked when, in the opinion of the department, it may not be in the best interest of public safety to issue or continue such authorization.

R708-16-7. Adjudicative Proceedings.

(1) All adjudicative proceedings including but not limited to the application for and denial, suspension or revocation of authorization to operate a pedestrian vehicle, shall be governed by the adjudicative proceedings set forth in the rule identified as R708-17. The adjudicative proceedings set forth in R708-17 are hereby incorporated into this rule by this reference.

KEY: traffic regulations**July 8, 2008****Notice of Continuation March 23, 2006****41-6a-1011**

R746. Public Service Commission, Administration.**R746-344. Filing Requirements for Telephone Corporations With Less Than 5,000 Access Line Subscribers.****R746-344-1. Purpose.**

A. Standard filing requirements are to provide uniformity of information for general rate case filings. The required information shall be filed on schedules, approved by the Commission, with the application for a change in rates. Providing this information with the rate application shall simplify proceedings, eliminate expense, and enhance the effectiveness of the fact finding process.

B. The standard filing requirements will provide factual information in an organized and referenced manner. This information may be used by the Commission, the Division of Public Utilities, or other interested parties to the case.

R746-344-2. Applicability.

The completion of the schedules approved by the Commission shall fulfill the requirement to provide necessary information to support proposed rate changes for telephone utilities with less than 5,000 subscriber access lines as set forth in Sections 54-7-12(7). The completed approved schedules shall be received by the Commission at least 30 days in advance of the proposed effective date of the rate changes.

R746-344-3. Hearing Process.

A. The Commission may, upon its own motion or upon complaint, set the case for hearing. If the case is set for hearing, the applicant may resubmit the schedules contained in the filing requirements as its primary exhibits. The Commission may require written direct testimony.

B. The applicant must provide notice of the hearing to its customers according to the Commission's Rules of Practice and Procedure, R746-100.

R746-344-4. Selection of a Test Year.

The applicant must base its rate change application on twelve months of data called a test year. The proposed test year can be historical, forecasted, or a combination of historical and forecasted months, not to exceed twelve months of forecasted data from the date the application is first received by the Commission.

R746-344-5. Forecasted Data.

A. The applicant shall provide the Commission with one copy of assumptions and the supporting work papers used to develop forecasted data. The applicant may be required by the Commission to provide updated actual data as it becomes available or to recalculate the forecasted data using justifiable alternative assumptions. An applicant which utilizes forecasted data for the test year, shall use an average rate base and capital structure to calculate the revenue deficiency.

B. The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies.

R746-344-6. Toll Revenues.

The applicant shall provide the Commission with a copy of the work papers and methodology used to develop the toll revenues included in the case.

R746-344-7. Audited Financial Statements.

If the applicant is audited by an independent certified public accounting firm, the applicant shall provide the Commission with one copy of the most recent audited financial statements, management letters and opinions prepared by that firm.

R746-344-8. Assistance Service.

Approved schedules will be self-explanatory. The applicant may contact the Division of Public Utilities for assistance if it does not understand the rate-making process for the schedules. A letter requesting assistance should be sent to:

Manager, Telecommunications Section
Division of Public Utilities
160 East 300 South Street
P.O. Box 45802
Salt Lake City, Utah 84145

KEY: public utilities, telecommunications, rules and procedures**1988****54-7-12(5)(6)****Notice of Continuation August 7, 2008**

R746. Public Service Commission, Administration.**R746-345. Pole Attachments.****R746-345-1. Authorization.**

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and 54-3-1, 54-4-1, and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility, as defined in 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 54-2-1(23)(b), solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.

B. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B)(3)(d).

C. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

D. "Make-Ready Work" -- The changes to be made to a pole owner's poles, its own pole attachments, the existing pole attachments of other attaching entities, or the existing additional equipment associated with such attachments, which changes may be needed to accommodate a proposed additional pole attachment. Such make-ready work is coordinated by the pole owner and is performed by the owners of the poles or owners of the pole attachments and additional equipment or as otherwise agreed to by these owners.

E. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

F. "Pole Owner" -- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

G. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

H. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

I. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in

47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, if available, and they would like a two-alternative make-ready bid. The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option. In the first alternative, the pole owner and attaching

entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. An applicant may, at its own discretion, exercise any of the self-build options given for the required make-ready work subject to the conditions made.

9. An applicant may reject a make-ready estimate if it wishes to contest, before the Commission, that the make-ready estimate or make-ready construction time line is not prepared in good-faith, or is unreasonable or not in the public interest.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these

attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception -- Electrical power pole attachments do not need to be labeled.

R746-345-5. Rental Rate Formula and Method.

A. Rate Formula -- Any rate based on the rate formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission. A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." "Gross cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. "Net cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot;

and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(i) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(A)(3)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(A)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

B. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the

Commission if the dispute process is not before the Commission.

B. Settlement -- If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement 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.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
August 29, 2006 **54-4-13**
Notice of Continuation August 7, 2008

R746. Public Service Commission, Administration.**R746-349. Competitive Entry and Reporting Requirements.****R746-349-1. Applicability.**

These rules shall be applicable to each telecommunications corporation applying to be a provider of local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in this rule:

A. "CLEC" means a public telecommunications service provider that did not hold a certificate to provide public telecommunications service as of May 1, 1995.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

D. "ILEC" means a telephone corporation which held a certificate to provide public telecommunications service as of May 1, 1995.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of Title 63G, Chapter 4 and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of \$100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation or liabilities to the Utah Public Telecommunications Service Support Fund, 54-8b-15, or the Hearing and Speech Impaired Fund, 54-8b-10. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer and state fund liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission its proposed price list or if ordered by the Commission, the prices, terms, and conditions of a competitive contract. Each filing may be made electronically and shall:

1. describe the public telecommunications services being offered;
2. set forth the terms and conditions upon which the public telecommunications service is being offered;
3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and
4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

- a. private line and special access,
- b. business local exchange,
- c. residential local exchange,
- d. measured interexchange,
- e. vertical services,

- f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic

areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC may be considered protected documents under the Government Records Access Management Act, if the CLEC complies with the requirements of that act.

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by an ILEC, the Commission or other party, a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3 is exempt from the following statutes and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules or by a Commission order apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3. All powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3.

1. Exemptions from Title 54:
 - 54-3-8, 54-3-19 -- Prohibitions of discrimination
 - 54-7-12 -- Rate increases or decreases
 - 54-4-21 -- Establishment of property values
 - 54-4-24 -- Depreciation rates
 - 54-4-26 -- Approval of expenditures
2. Exemptions from Commission rules:
 - R746-340-2 (D) -- Uniform System of Accounts (47 CFR

32)

- R746-340-2 (E) (1) -- Tariff filings required
- R746-340-2 (E) (2) -- Exchange Maps
- R746-341 -- Lifeline (CLEC with ETC status)
- R746-344 -- Rate case filing requirements
- R746-401 -- Reporting of construction, acquisition and disposition of assets
 - R746-405 -- Tariff formats
 - R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule.

R746-349-7. Informal Adjudication of Certain CLEC Merger and Acquisition Transactions.

A. A CLEC may obtain approval of a transaction subject to 54-4-28 (merger, consolidation or combination), 54-4-29 (acquiring voting stock or securities), and 54-4-30 (acquiring properties) in the following manner. Such adjudicative proceedings are designated as informal adjudicative proceedings pursuant to 63-46b-5 unless converted to formal adjudicative proceedings.

1. The CLEC shall submit an application which includes, but is not limited to:

- a. identification that it is not an ILEC,
- b. identification that it seeks approval of the application pursuant to this rule,
- c. a reasonably detailed description of the transaction for which approval is sought,
- d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and
- e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

2. Upon receipt of the CLEC's application, the Commission will issue a public notice stating that the application has been filed, that any interested party may submit comments on the application within 14 days following public notice and may submit reply comments within 21 days following public notice, and provide notice of the date and time for a hearing on the application, which shall be scheduled to occur within 30 days following the issuance of the public notice.

3. If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

4. The Commission may convert the proceeding on an application into a formal adjudicative proceeding based upon an objection made in comments or reply comments, evidence submitted, other reasonable basis, which may include failure of the transaction to qualify for streamlined treatment from a federal agency, or its own motion and may continue the hearing on the application as needed.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;
2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;
3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;
4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the

normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

A. The Commission may initiate or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by 54-8b-2.3(8).

1. A request to initiate any proceeding pursuant to this rule shall:

- a. Identify the telecommunications corporation or corporations and the public telecommunications service or services whose pricing flexibility the requesting party believes may be subject to revocation or imposition of conditions or restrictions;
- b. The basis for the belief; and
- c. The relief sought.

2. A request to initiate a proceeding shall be served upon the telecommunications corporation or corporations the requesting party has identified in the request, the Division and the Committee.

3. The telecommunications corporation or corporations against whom the request is directed and any other interested party may respond to the request in accordance with the Commission's procedural rules and standard practices.

4. If a proceeding is initiated, an interested party may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning or restriction under section 54-8b-2.3(8). The party shall certify that it seeks to review that confidential information solely for purposes of determining whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any persons who may be able to use the confidential information in business decisions to any party's competitive advantage. Prior to disclosing any confidential information, the Commission or the Division:

- a. Shall require the requesting party to execute an appropriate nondisclosure agreement;
- b. Shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing such information; and
- c. Shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if such telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of such confidential information within 10 calendar days after receiving the notice required by 349-9.4.b. The Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.

5. In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for

confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.

6. Nothing in this rule limits the ability of any party or the Commission to raise or address any issue in any other proceeding or as permitted by law.

KEY: essential facilities, imputation, public utilities, telecommunications

August 25, 2008 54-7-25 through 28

Notice of Continuation March 8, 2007 54-8b-2

54-8b-3.3

63G-4

R746. Public Service Commission, Administration.**R746-404. Regulation of Promotional Programs of Electric and Gas Public Utilities.****R746-404-1. General Provisions.**

An application for approval of promotional programs of the above utilities shall be filed with the Public Service Commission of Utah 30 days before they are to be put into effect. An application for a promotional program requires a docket number and must include a proposed tariff section. The application must also include a forecasted description of net ratepayer benefit. A copy of the application shall be sent by first class mail to the Division of Public Utilities, Committee of Consumer Services, utilities with competing programs and to any other party so designated by the Commission. Any affected person desiring a hearing should notify the Commission in writing within 20 days of the filing of the application. If no person requests a hearing or additional time to investigate, the application shall take effect at the expiration of 30 days from the time of filing. If a hearing or additional time is requested, an order by the Commission is needed for program approval.

R746-404-2.

"Promotional Programs" shall include all programs that allow, give, or promise cash, replacement allowances, discounts, rebates, appliances, equipment, or facilities to a person, firm, association, corporation, or group whatsoever, in consideration of the use of the service of the electric or gas public utility offering the inducement, excluding line extensions made pursuant to rules and orders on file with the Commission. Testing, research, or demonstration projects are not considered promotional programs for purposes of this rule.

R746-404-3.

The following standards shall apply to promotional programs:

- A. No promotional program shall be implemented without prior Commission approval.
- B. A promotional program may not vary the rates, charges, rules and regulations of the tariff pursuant to which service is rendered to the customer without prior Commission approval.
- C. Each promotional program must be uniformly and contemporaneously available to all similarly situated customers.
- D. The promotional program must be reasonably expected to promote the interests of the utility and its customers. There must be a demonstrable net ratepayer benefit.

KEY: public utilities, rules and procedure, programs**1988****54-4-1****Notice of Continuation August 7, 2008****54-4-7**

R746. Public Service Commission, Administration.
R746-406. Advertising by Electric and Gas Utilities.
R746-406-1. General Provisions.

Except as provided in Subsection C, no electric or gas utility may recover from a person, other than shareholders or other owners of the utility, a direct or indirect expenditure by the utility for political, promotional or institutional advertising.

A. For the purposes of this rule:

1. The term "advertising" means the commercial use, by an electric or gas utility, of media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's consumers.

2. The term "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to an issue of public dispute.

3. The term "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of an electric or gas utility or the selection or installation of an appliance or equipment designed to use that utility's service.

4. The term "institutional advertising" means advertising which is designed to create, enhance, or sustain an electric or gas utility's public image or good will with the general public or the utility's customer.

B. For the purposes of this rule, the terms "political advertising," "promotional advertising," and "institutional advertising" do not include:

1. advertising which informs consumers how they can conserve energy, use energy wisely, or reduce peak demand for energy;

2. advertising required by law or regulation, including advertising required under Part 1 of Title II of the National Energy Conservation Policy Act;

3. advertising regarding service interruption, safety measures, or emergency conditions;

4. advertising concerning employment opportunities with the utility; or

5. an explanation of existing or proposed rate schedules, or notifications of hearing thereon, or

6. information about the availability of energy assistance programs.

C. Notwithstanding the foregoing provisions, expenditures relating to promotional and institutional advertising may be recovered in rates if the Commission has found, after due consideration in either a rate case or separate proceeding prior to implementation, that the advertising is in the public interest.

KEY: public utilities, advertising
1988
Notice of Continuation August 7, 2008

54-4-1
54-4-7

R746. Public Service Commission, Administration.**R746-500. Americans With Disabilities Act Complaint Procedure.****R746-500-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Section 54-1-1 and Section 63G-3-201(2) of the State Administrative Rulemaking Act. The Commission, pursuant to 28 CFR 35.107 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.

B. The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of that 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 a public entity.

R746-500-2. Definitions.

A. "ADA" means Americans With Disabilities Act.

B. "The ADA coordinator" means the Commission Secretary or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

1. Office of Planning and Budget;
2. Department of Human Resource Management;
3. Division of Risk Management;
4. Division of Facilities Construction Management; and
5. Office of the Attorney General.

D. "CFR" means Code of Federal Regulations, 1991 edition.

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

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

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

H. "Public Entity" means a state or local government; a department, agency, special purpose district, or other instrumentality of a state or local government.

R746-500-3. Filing of Complaints.

A. An individual who feels he has been discriminated against by or at the Commission may file a complaint by filing in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, a complaint alleging an act of discrimination occurring before the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. Each complaint shall be filed with the Commission's ADA coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

1. include the individual's name and address;
2. include the nature and extent of the individual's

disability;

3. describe the Commission's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;

4. describe the action and accommodation desired; and

5. be signed by the individual or by a legal representative of that individual.

D. A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, the alleged victims of discrimination.

R746-500-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure that relevant facts are determined and documented. This may include gathering the information listed in Subsection 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Commission's staff in determining what action shall be taken on the complaint. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable within the Commission's budget and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R746-500-5. Issuance of Decision.

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

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

R746-500-6. Appeals.

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

B. The appeal shall be filed in writing with the chairman of the Commission or a designee other than the Commission's ADA coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review by the Commission's chairman, or designee, of information, including information classified as private or controlled.

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

E. The Commission chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the Commission chairman or designee shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days

after receiving the appeal and shall be in writing or another format suitable to the individual.

G. If the Commission chairman or his designee is unable to reach a decision within the ten working day period the individual shall be notified, in writing or other suitable format, why the decision is being delayed and the additional time needed to reach a decision.

R746-500-7. Classification of Records.

The record of each complaint and appeal, and the written records produced or received as part of those actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, Commission chairman or their designee issues the decision, when a portion of the record that may pertain to the individual's medical condition shall remain classified private as defined under Section 63G-2-302, or as controlled as defined in Section 63G-2-304. Other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Commission chairman or designees shall be classified as public information.

R746-500-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures at 28 CFR Subpart F, beginning with Part 35.170; or other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

1993

Notice of Continuation August 4, 2008

63G-3-201(2)

63G-2-302

63G-2-304

63G-2-305

67-19-32

R746. Public Service Commission, Administration.**R746-800. Working 4 Utah Operations.****R746-800-1. Purpose.**

The Working 4 Utah Initiative is an office-hour schedule effective August 3, 2008. While Working 4 Utah is in effect, state offices and agencies will be open 7 a.m. through 6 p.m., Monday through Thursday and will be closed all day Friday. This rule addresses how the Commission will operate and how documents are to be submitted to the Commission and served upon other parties to comply with other Commission rules or statutory provisions when state offices are closed on a Friday which is not a legal holiday.

R746-800-2. Requests for Agency Action or Other Initiatory Documents.

The paper original, required paper copies and electronic document versions of a Request for Agency Action, other documents which initiate administrative proceedings or which are initial documents submitted to the Commission will only be received during the Working 4 Utah office hours on Mondays through Thursdays; they will not be accepted on a Friday.

R746-800-3. Motions, Response Documents and Other Similar Documents.

Documents which would not initiate agency proceedings or which are to be submitted or served during the pendency of a Commission proceeding, e.g., comments, motions, responses or replies to previously filed documents, etc., and whose filing date or service date fall on a Friday should be filed or served as follows.

A. Fridays which are a legal holiday. If the Friday is a legal holiday under state law, documents are to be filed with the Commission and may be served upon parties on the first subsequent week-day (likely the following Monday or Tuesday) which is not a legal holiday.

B. Fridays which are not a legal holiday. If the Friday is not a legal holiday but is a Friday on which the Commission's office is closed under the Working 4 Utah Initiative, the electronic document version should be submitted to the Commission's electronic filing email address before 11:59 p.m. of that Friday, and the paper original and required paper copies are to be filed with the Commission on the first subsequent week-day (likely Monday or Tuesday) which is not a legal holiday. Service of a paper copy or electronic document version of a document required to be made upon other persons shall continue to be made as governed by statute, rule or order.

R746-800-4. Commission Action Falling on a Friday.

If Commission action required by a statute, rule or order is to occur on a date which falls on or from a time period which ends on a Friday which is not a legal holiday, the Commission action will still be required on such Friday, even though it is a Work 4 Utah Friday on which the Commission's office is closed.

KEY: utilities, office hours, filing**August 25, 2008**

54-3-21

54-3-22

54-4-1

54-4-2

R765. Regents (Board of), Administration.
R765-134. Informal Adjudicative Procedures Under the Utah Administrative Procedures Act.

R765-134-1. Purpose.

To provide guidelines and procedures for the application of the Administrative Procedures Act Title 63G, Chapter 4, and associated regulations, to the public institutions of higher education, the State Board of Regents, and the Utah Higher Education Assistance Authority.

R765-134-2. References.

- 2.1. Section 53B-1-103
- 2.2. Section 63G-4-102 et seq.

R765-134-3. Definitions.

3.1. "Adjudicative proceeding" means an institutional action or proceeding described in Section 63G-4-102, Utah Code Annotated (1953).

3.2. "Institution" means the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education.

3.3. "Party" means the institution or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.

3.4. "Person" means an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.

3.5. "Presiding officer" means the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.

3.6. "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

R765-134-4. Policy.

4.1. The Utah Administrative Procedures Act, Section 63G-4-102, provides certain exemptions from the Act which affect higher education institutions.

As a consequence of the foregoing statutory provisions adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be conducted solely according to federal procedures are not governed by the Utah Administrative Procedures Act.

4.2. Campus traffic and parking - Section 53B-3-106(2), provides that "State institutions of higher education are 'political subdivisions' . . . as these terms are used in Chapter 6, Title 41." relating to Traffic Rules and Regulations. The Utah Administrative Procedures Act applies to "agencies" which as defined in 63G-4-103(1)(b) does not include "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by Chapter 6, Title

41, hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.

4.3. Informal adjudicative proceedings for certain admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, former employee matters, and other matters not exempted from the Administrative Procedures Act - Adjudicative proceedings, undertaken by an institution, which affect matters other than (a) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, (b) personnel matters for all employees, (c) campus traffic, (d) contracts for the purchase and sale of goods and services by the institution, or (e) actions required by federal statute or regulation to be conducted solely according to federal procedures, are to be conducted informally according to the procedures set forth in these rules, enacted under the authority of the Utah Administrative Procedures Act. Adjudicative proceedings where parties other than students or employees are involved hereby authorized to be handled informally include, but are not limited to, admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, and former employee matters.

4.4. Board findings as to appropriateness of informal adjudicative proceedings - The use of informal procedures as provided in paragraph 4.3 does not violate any procedural requirement imposed by a statute other than Chapter 4, Title 63G; the rights of the parties to the proceedings will be reasonably protected by the informal procedures; the institutions' administrative efficiency will be enhanced by this categorization; and the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

4.5. Substitution of presiding officer - If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

4.6. Institutional variances with this rule - Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of Chapter 4, Title 63G. Significant variations from the Board's rules and procedures must be approved by the Board.

R765-134-5. Procedures for Informal Adjudicative Proceedings.

5.1. Commencement - An informal adjudicative proceeding shall be commenced by either (a) a notice of institutional action, if proceedings are commenced by the institution; or (b) a request for institutional action, if proceedings are commenced by persons other than the institution.

5.2. Notice - A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements: The notice shall be in writing, signed by a presiding officer if the proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by his representative, and shall include:

5.2.1. the names and mailing addresses of all respondents and other persons to whom notice is being given;

5.2.2. the institution's file number or other reference number;

5.2.3. the name of the adjudicative proceeding;

5.2.4. the date that the notice of institutional action or the request for institutional action was mailed;

5.2.5. if a hearing is to be held, a statement of the time and place of any scheduled hearing, a statement of the purpose for

which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

5.2.6. if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;

5.2.7. a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;

5.2.8. a statement of the purpose of the adjudicative proceeding, the questions to be decided (to the extent known) or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and

5.2.9. the name, title, mailing address, and telephone number of the presiding officer.

5.2.10. The institution shall mail the notice of institutional action or the request for institutional action to each party.

5.3. Answer not required - No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

5.4. Hearings - The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

5.5. Rights of parties to testify, present evidence, and comment on the issues - In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation is normally limited to the named parties.

5.6. Timely notice - Hearings will be held only after timely notice to all parties.

5.7. No discovery or subpoenas - Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.

5.8. Access to institution's files - All parties shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

5.9. Intervention prohibited - Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

5.10. Hearings open to parties - All hearings shall be open to all parties. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

5.11. Order of the presiding officer - Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

5.11.1. the decision;

5.11.2. the reasons for the decision;

5.11.3. a notice of any right of administrative or judicial review available to the parties; and

5.11.4. the time limits for filing an appeal or request for review.

5.12. Basis of order - The presiding officer's order shall be based on the facts appearing in the institution's files and on the

facts presented in evidence at any hearings.

5.13. Hearings recorded - All hearings shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

5.14. Institution's investigative rights - Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than Chapter 4, Title 63G.

5.15. Default - The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.16. Institutional review - If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in 63G-4-301, Utah Code Annotated (1953).

5.17. Institutional reconsideration - Within ten days after the date that an order on review is issued, or within ten days after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

5.18. Exhaustion of administrative remedies - A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by statute, only after exhausting all administrative remedies available, except that:

5.18.1. a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required;

5.18.2. the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

5.19. Filing for judicial review - A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 4, Title 63G.

5.20. Judicial review - The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be reviewed by the district courts on the record according to the standards of 63G-4-403(4). The form of the

petition and procedures for this process are set forth in 63G-4-402, Utah Code Annotated (1953).

5.21. Stay and other temporary remedies pending final disposition on judicial review - Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

5.22. Emergency adjudicative proceedings - An institution may issue an order on an emergency basis without complying with the requirements of Chapter 4, Title 63G if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall:

5.22.1. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

5.22.2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and

5.22.3. give immediate notice to the persons who are required to comply with the order. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and Chapter 4, Title 63G.

5.23. Declaratory orders - Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order: (a) declaring the applicability of the statute rule, or order in question to the specified circumstances; (b) setting the matter for adjudicative proceedings; (c) agreeing to issue a declaratory order within a specified time; or (d) declining to issue a declaratory order and stating the reasons for its action. The declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based; (b) the particular facts on which it is based; and (c) the reasons for its conclusions.

KEY: colleges, higher education, adjudicative procedures
July 2, 1997 **63G-4**
Notice of Continuation October 23, 2007

R767. Regents (Board of), College of Eastern Utah.**R767-1. Government Records Access and Management Act.****R767-1-1. Purpose.**

The purpose of this rule is to provide procedures for access to the records of the College of Eastern Utah.

R767-1-2. Authority.

The authority for this rule is provided by Section 63G-2-204 and by Section 63A-12-104 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992.

R767-1-3. Allocation of Responsibilities Within Entity.

College of Eastern Utah (including all campuses, centers, and locations) shall be considered a single governmental entity and the President of College of Eastern Utah shall be considered the head.

R767-1-4. Chief Administrative Officer.

(1) The President of College of Eastern Utah (CEU), is the Chief Administrative Officer at CEU responsible for:

(a) Overall administration of records management programs in satisfying requirements for GRAMA.

(b) Exercise of decision-making authority when a request for access to certain private, controlled or protected records is deemed to outweigh the institution's interests in restricting such access.

(c) Adjudicating appeals by requesters who have been denied access.

(d) Adjudicating appeals by the subject of a record who is requesting an amendment to his/her record.

(e) Deciding requests for information regarding materials of Intellectual Property Rights owned by College of Eastern Utah.

R767-1-5. Records Officer.

(1) The Director of Academic Records/Registrar is the Records Officer for purposes of satisfying GRAMA requirements and is responsible for:

(a) Development and oversight of records management and access.

(b) Serving as liaison with State Archives.

(c) Receiving and processing requests for access of records for all campuses, centers and locations of College of Eastern Utah.

(d) Preparing and maintaining information on records transferred to, and retrieved from the State Archives Division.

(e) Overseeing retention and destruction schedules of various records and record series of the College.

(f) Training of the campus personnel on the requirements of GRAMA.

(g) Other activities consistent with records officer's duties including the designation of records or records series under Section 63G-2-307 of GRAMA.

R767-1-6. Request for Access.

(1) Requests for access to government records of College of Eastern Utah shall be in writing and made to the Director of Academic Records/Registrar, Academic Records Office, Jennifer Leavitt Student Center.

(2) Response to a request submitted to other persons within College of Eastern Utah may be delayed in accordance with subsections 63G-2-204 (2), (6).

(3) A person making a request for a record shall furnish the governmental entity with a request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity in pursuant to section 63G-2-204(1).

(4) Subpoenas are not considered written requests under GRAMA.

R767-1-7. Appeals.

(1) Appeals of denied requests will be adjudicated by the President of College of Eastern Utah, or designee.

(2) Requests for appeal should be written and made to the President, President's Office, Reeves Building in accordance with Section 63G-2-401.

R767-1-8. Fees.

(1) A fee schedule of the direct and indirect costs of duplicating or compiling a record may be obtained from College of Eastern Utah by contacting the Academic Records Office, Jennifer Leavitt Student Center.

(2) College of Eastern Utah may require payment of overdue fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50.00.

R767-1-9. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63G-2-203 (3). Requests for this waiver of fees may be made through the Academic Records Office, Jennifer Leavitt Student Center.

R767-1-10. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed under Subsection 63G-2-202 (8). Requests for access to records for research purposes may be made to the Director of Academic Records/Registrar, Academic Records Office, Jennifer Leavitt Student Center.

R767-1-11. Intellectual Property Rights.

The College of Eastern Utah, which may own an intellectual property right may duplicate and distribute such materials in accordance with Subsection 63G-2-201(10). Decisions with regard to these rights will be made by the President, President's Office, Reeves Building. Any questions regarding the duplication and distribution of such materials should be addressed to the President.

R767-1-12. Requests to Amend a Record.

(1) An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. Such request should be made to the President, President's Office, Reeves Building.

(2) Requests to amend a record shall be conducted in accordance with the steps outlined in Section 63G-2-603 of the GRAMA Act.

R767-1-13. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act. Appeals may be filed with the President, President's Office, Reeves Building.

KEY: confidentiality of information, public records, records access, GRAMA**October 29, 2007****Notice of Continuation June 19, 2007****63G-2-204****63A-12-104**

**R850. School and Institutional Trust Lands, Administration.
R850-3. Applicant Qualifications, Application Forms, and
Application Processing.**

R850-3-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

R850-3-200. Applicant Qualifications.

Any person qualified to do business in the state of Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease or permit.

R850-3-300. Application Forms.

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

R850-3-400. Application Processing.

1. Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange, Modified Grazing Permit, or Materials Permit, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that:

- (a) activities with higher priorities would be adversely impacted by processing the application;
- (b) an existing or planned application or activity on the parcel would be adversely impacted by processing the application;
- (c) an agency-initiated activity would be adversely impacted by processing the application; or
- (d) proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

2. No fees shall be collected from the applicant prior to the above-referenced evaluation. If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits and fees which may be required in order to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

R850-3-500. No Interest Conveyed by Submitting Application.

1. Until an executed instrument of conveyance, lease, permit or right is delivered or mailed to the successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

2. The Trust Lands Administration may reject any application prior to execution if it determines that rejection is in the best interest of the trust.

3. If an application is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

4. Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or

appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

5. Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant or certificate is offered but not executed by the applicant.

R850-3-600. Rule Changes During Application Processing.

Applications shall be processed in accordance with the applicable rules in effect at the time the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under this section 600, all fees, except application fees, shall be refunded to the applicant without penalty.

**KEY: administrative procedures, residency requirements
June 3, 2003 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2007 53C-2-404**

R859. Sports Authority (Utah), Pete Suazo Utah Athletic Commission.**R859-1. Pete Suazo Utah Athletic Commission Act Rule.****R859-1-101. Title.**

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R859-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

R859-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R859-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R859-1-101 through R859-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R859-1-601 through R859-1-623 shall apply only to contests of boxing, as defined in Subsection R859-1-102(1). The provisions of Sections R859-1-701 through R859-1-702 shall apply only to elimination tournaments, as defined in R859-1-102(4). The provisions of Section R859-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R859-1-1001 through R859-1-1004 shall apply only to grants for amateur boxing.

R859-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is

a promoter, manager, contestant, second, referee, or judge.

(2) A licensed manager shall not hold a license as a referee or judge.

(3) A promoter shall not hold a license as a referee, judge, or contestant.

R859-1-302. Licensing - Procedure.

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

R859-1-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R859-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R859-1-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

R859-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

R859-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

R859-1-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

R859-1-501. Promoter's Responsibility in Arranging Contests-Permit Fee, Bond, Restrictions.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all

publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the money for payment of contestants, referees, judges, and the attending physician. The designated Commission member shall pay each contestant, referee, judge, and physician in the presence of one witness.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter should also have life insurance coverage of \$10,000 for each contestant in case of death.

R859-1-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) a sufficient number of buckets for use by the contestants;

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) scales for weigh-ins, which the Commission shall require to be certified;

(j) a gong;

(k) a public address system;

(l) a separate dressing room for each sex, if contestants of both sexes are participating;

(m) a separate room for physical examinations;

(n) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(o) adequate security personnel; and

(p) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms and for physical examinations and weigh-ins.

R859-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract

between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R859-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

- (i) the Commission members, Director and representatives;
- (ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and
- (iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R859-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

- (a) eyes;
- (b) teeth;
- (c) jaw;
- (d) neck;
- (e) chest;
- (f) ears;
- (g) nose;
- (h) throat;
- (i) skin;
- (j) scalp;
- (k) head;
- (l) abdomen;
- (m) cardiopulmonary status;
- (n) neurological, musculature, and skeletal systems;
- (o) pelvis; and
- (p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be

denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R859-1-506. Drug Tests.

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:

- (a) Alcohol;
- (b) Stimulant; or

(c) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R859-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited pursuant to R859-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R859-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R859-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby adopted by reference. The most current edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R859-1-506 (1), but their use is discouraged by the Commission:

- (a) Aspirin and products containing aspirin.
- (b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline,

Cromolyn, Nasalide or Vancerial.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R859-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a contestant or assigned official shall submit to a test of body fluids to determine the presence of drugs. A contestant must give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a drug or if the contestant or assigned official is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the contestant's or assigned official's license in accordance with Section R859-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

(8) Unless the commission licensing an event requires otherwise, a contestant who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

R859-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R859-1-508. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretionary use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretionary use of coagulants, adrenalin 1/1000,

avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of Monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R859-1-509. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighed more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative; or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R859-1-510. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R859-1-511. Timekeepers.

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R859-1-512. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-

11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R859-1-601. Boxing - Contest Weights and Classes.

(1) Boxing weights and classes are established as follows:

(a) Strawweight: up to 105 lbs. (47.627 kgs.)

(b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)

(c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)

(d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)

(e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)

(f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)

(g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)

(h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)

(i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)

(j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)

(k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)

(l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)

(m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)

(n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)

(o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)

(p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)

(q) Heavyweight: all over 200 lbs. (90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in

order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

- (a) the win-loss record of the contestants;
- (b) the weight differential;
- (c) the caliber of opponents;
- (d) each contestant's number of fights; and
- (e) previous suspensions or disciplinary actions.

R859-1-602. Boxing - Number of Rounds in a Bout.

(1) A contest bout shall consist of not less than four and not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.

(2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

R859-1-603. Boxing - Ring Dimensions and Construction.

(1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend not less than 18 inches beyond the ropes. The ring floor shall be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

R859-1-604. Boxing - Gloves.

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 154 lbs. (69.853 kgs.) or less. Contestants who weigh more than 154 lbs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the

wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R859-1-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R859-1-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R859-1-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

- (a) one referee;
- (b) three judges;
- (c) one timekeeper; and
- (d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R859-1-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R859-1-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R859-1-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R859-1-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury

the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the

Commission on each contestant who has been knocked out or injured.

R859-1-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R859-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the

ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R859-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R859-1-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

R859-1-615. Boxing - Fouls.

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the

following fouls:

- (a) holding an opponent or deliberately maintaining a clinch;
- (b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.
- (c) hitting or gouging with an open glove;
- (d) wrestling, spinning or roughing at the ropes;
- (e) causing an opponent to fall through the ropes by means other than a legal blow;
- (f) gripping at the ropes when avoiding or throwing punches;
- (g) intentionally striking at a part of the body that is over the kidneys;
- (h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;
- (i) hitting on the break or after the gong has sounded;
- (j) hitting an opponent who is down or rising after being down;
- (k) hitting below the belt line;
- (l) holding an opponent with one hand and hitting with the other;
- (m) purposely going down without being hit or to avoid a blow;
- (n) using abusive language in the ring;
- (o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;
- (p) intentionally spitting out a mouthpiece;
- (q) any backhand blow; or
- (r) biting.

R859-1-616. Boxing - Penalties for Fouling.

- (1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.
- (2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.
- (3) A judge shall not deduct points unless instructed to do so by the referee.
- (4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

R859-1-617. Boxing - Contestant Outside the Ring Ropes.

- (1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.
- (2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.
- (3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.
- (4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.
- (5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.
- (6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

R859-1-618. Boxing - Scoring.

- (1) Officials who score a boxing contest shall use the 10-point must system.
- (2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.
- (3) Officials who score the contest shall mark their cards in ink or in indelible pencil at the end of each round.
- (4) Officials who score the contest shall sign their scorecards.
- (5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.
- (6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.
- (7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.
- (8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

- (9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.
- (10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

R859-1-619. Boxing - Seconds.

- (1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.
- (2) All seconds shall remain seated during the round.
- (3) A second shall not spray or throw water on a boxing contestant during a round.
- (4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.
- (5) A second shall not enter the ring until the timekeeper has indicated the end of a round.
- (6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.
- (7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R859-1-609(6) and R859-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.
- (8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should

be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

R859-1-620. Boxing - Managers.

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

R859-1-621. Boxing. Identification - Photo Identification Cards.

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

- (a) the contestant's name and address;
- (b) the contestant's social security number;
- (c) the personal identification number assigned to the contestant by a boxing registry;
- (d) a photograph of the boxing contestant; and
- (e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

R859-1-622. Boxing - Dress for Contestants.

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R859-1-604.

(2) In addition to the clothing required pursuant to Subsections R859-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

R859-1-623. Boxing - Failure to Compete.

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as

approved by the Commission to examine the contestant.

R859-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R859-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R859-1.

R859-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12 rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R859-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R859-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R859-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the

contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R859-1.

R859-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

R859-1-1001. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R859-1-1002. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 63C-11-311(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

R859-1-1003. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

R859-1-1004. Criteria for Awarding Grants.

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY: licensing, boxing, unarmed combat, white-collar contests

September 1, 2008

63C-11-101 et seq.

Notice of Continuation May 10, 2007

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.****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 Conferences Pursuant to Utah Code**Ann. Sections 59-1-210 and 63G-4-102.**

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 that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
 - (a) orally or in writing;
 - (b) in person or through counsel; and
 - (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

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 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) 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

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) 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

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) 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.

(3) 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.

(a) 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

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

- (i) the individual's name and address;
- (ii) the nature and extent of the individual's disability;
- (iii) a copy of the accommodation coordinator's reply;
- (iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
- (v) a description of the accommodation desired; and
- (vi) the signature of the individual or the individual's legal representative.

(4) 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.

(a) 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.

(b) 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.

(5) 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 63G-2-305 until the executive director issues a decision.

(6) 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 63G-2-302 or controlled under Section 63G-2-304, 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.

Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

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 63G-4-201.

(1) 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.

(2) 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 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number

or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) 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;

(e) 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

(f) in the case of property tax cases, the assessed value sought.

(3) 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, 63G-4-206, and 63G-4-208.

(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, 63G-4-206, 76-8-502, and 76-8-503.

(1) 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.

(2) 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.

(a) 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.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) 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.

(3) 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.

(a) 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.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) 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.

(d) 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.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) 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.

(6) 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 63G-4-302.

(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 63G-4-203 and 63G-4-206.

(1) 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.

(2) 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.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) 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.

(4) 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 63G-4-503.

(1) 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:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(2) 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.

(3) 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.

(4) 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 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) 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.

(d) 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:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection

(2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information 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 information, 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-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63, Chapter 46b, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer. (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

- (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
- (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

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 August 18, 2008

- Notice of Continuation March 20, 2007
- 10-1-405
- 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
- 59-1-706
- 59-1-1004
- 59-10-512
- 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

- 59-2-1004
- 59-2-1006
- 59-2-1007
- 59-2-704
- 59-2-924
- 59-7-517
- 63G-3-301
- 63G-4-102
- 76-8-502
- 76-8-503
- 59-2-701
- 63G-4-201
- 63G-4-202
- 63G-4-203
- 63G-4-204
- 63G-4-205 through 63G-4-209
- 63G-4-302
- 63G-4-401
- 63G-4-503
- 63G-3-201(2)
- 68-3-7
- 68-3-8.5
- 69-2-5
- 42 USC 12201
- 28 CFR 25.107 1992 Edition

R865. Tax Commission, Auditing.**R865-6F. Franchise Tax.****R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.**

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise

tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**A. Definitions.**

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and
2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or

transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home

office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of

immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

RM65-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(a) Nonbusiness income means all income other than business income and shall be narrowly construed.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In

general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

(c) Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(i) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Subsection (7)(a)(i).

(ii) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See Subsection (7)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

(v) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(vi) A schedule must be submitted with the return showing:

(A) the gross income from each class of income being allocated;

(B) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) the total amount of the applicable expenses for each income class; and

(D) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

(vii) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the

return for the current year the nature and extent of the modification.

(viii) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(2) Definitions.

(a) "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" means the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

(e) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

(3) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) Except as provided in Subsection (3)(a)(ii)(B), if a taxpayer does not make an election to double weight the sales factor under Subsection 59-7-311(3) and one or more of the factors listed in Subsection 59-7-311(2)(a) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer has made an election to double weight the sales factor under Section 59-7-311(3) and if the sales factor is present, the denominator of the fraction described in Subsection (3)(a)(ii)(A) shall be increased by one.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(4) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(5) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the

United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(6) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (7), the payroll factor, see Subsection (8), and the sales factor, see Subsection (9) of the trade or business of the taxpayer. For exceptions see Subsection (10).

(7) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (7)(f).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or

business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection 10(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or

other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:
 $\$120,000 / 12 = \$10,000$

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (7)(f)(i).

(8) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The

compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(i) The term "employee" means:

(A) any officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(ii)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(e) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(f) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(iv) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales Factor. In General.

(a) Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See

Subsection (10)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (10)(c).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (9)(e)) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a

general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f) Sales Other than Sales of Tangible Personal Property in this State.

(i) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed

in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

(10) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;
 (ii) the exclusion of any one or more of the factors;
 (iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state;
 or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(c) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For

example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (9)(a)(i), and income from the sale, licensing or other use of intangible personal property, see Subsection (9)(f)(ii)(D).

(A) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (10)(c)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (10)(c)(iv). This Subsection (10)(c)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (10)(c)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (10)(c)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(d) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(e) Partnership or Joint Venture Income. Income or loss

from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

- a. depreciation (see rule R865-6F-9),
- b. depletion,
- c. exploration and development expenses,
- d. intangible drilling costs,
- e. accounting methods and periods (see rule R865-6F-2),

and

- f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

- a. installment sales (see rule R865-6F-15),
- b. consolidated returns (see rule R865-6F-4),
- c. liquidating dividends,
- d. municipal bond interest,
- e. capital loss deduction,
- f. loss carry-overs and carry-backs, and
- g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report

on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is

computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a \$9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken, and \$3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is \$3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only \$2,500,000 of the \$3,000,000 billed

during the current year, the amount of gross receipts to be included in the sales factor for the current year is \$2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year—even though under the completed-contract method of accounting, business income is computed separately.

(6) The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

(7) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (7)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (7)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (7)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to

this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles

traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or (d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

- (A) that is transported outside of the enterprise zone; and
- (B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.

(g) "Taxpayer" means the person claiming the tax credits in section 63-38f-413.

(h) "Transfer" pursuant to Section 63-38f-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(i) "Unitary group" is as defined in Section 59-7-101.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone; or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection (4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an

enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection (4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

(4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

(6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(7) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(8) Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.

(9) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(10) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of

compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with

the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state = \$3,000,000

Value of mobile property: 95/365 or (.260274) x \$4,000,000 =	\$1,041,096
Value of leased satellite property used in-state: (.02) x \$100,000,000 =	\$2,000,000
Total value of property attributable to state =	\$6,041,096
Total property factor percentage: \$6,041,096/\$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(10)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the

Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The Tax Commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from

direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income

tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease

or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in

the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under

resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business

of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the Tax Commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(9) and (10).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property

located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by

multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the

taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a

period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups

of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

(c) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8) and the sales factor in accordance with R865-6F-8(9).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(7).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be

determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

(1) For purposes of Section 59-7-703(2)(b)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by:

(a) adding back to the line on the Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

- (i) charitable contributions;
- (ii) total foreign taxes paid or accrued; and
- (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code.

(b) If the S corporation was not required to complete the line labeled "Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(2) An S corporation shall withhold tax on behalf of a nonresident shareholder at the rate in effect in Section 59-10-

104.

(3) An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

- (a) name;
- (b) social security number;
- (c) percentage of S corporation held; and
- (d) amount of Utah tax paid or withheld on behalf of that shareholder.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

- (i) for which the broker or dealer does not take title; and
- (ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in

the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

KEY: taxation, franchises, historic preservation, trucking industries

August 18, 2008

Notice of Continuation March 8, 2007

**9-2-401
through
9-2-415
16-10a-1501
through**

**16-10a-1533
53B-8a-112
59-1-1301 through 59-1-1309
59-6-102
59-7-101
59-7-102
59-7-104
through
59-7-106
59-7-108
59-7-109
59-7-110
59-7-112
59-7-302
through
59-7-321
59-7-402
59-7-403
59-7-501
59-7-502
59-7-505
59-7-601
through
59-7-614
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202
63-38f-401 through 63-38f-414**

R865. Tax Commission, Auditing.**R865-91. Income Tax.****R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.****A. Domicile.**

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-91-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-91-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-91-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-91-8. Proration When Two Returns Are Required

Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-91-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-91-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-91-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-1405.

(1) Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

(2) Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

(a) Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

(b) A schedule shall be included with the return listing all

nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

- (i) name;
- (ii) address;
- (iii) social security number;
- (iv) percentage of partnership or limited liability company income;
- (v) Utah income attributable to that partner or member.

(c) Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

(3) The tax shall be computed using the tax rate imposed in accordance with Section 59-10-104.

(4) The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-91-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

- 1. to a nonresident employee for services performed within Utah,
- 2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

- 1. subject to withholding for federal income tax purposes;
- 2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-91-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-91-16. Collection and Payment of Withholding

Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

- 1. the name and address of the employee and employer;
- 2. the employer's Utah withholding tax account number;
- 3. the amount of compensation;
- 4. the amounts of federal and Utah state income tax withheld;
- 5. the social security number of the employee;
- 6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and
- 7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

- 1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
- 2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-91-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

- 1. files a federal Schedule H; or
- 2. withholds less than \$1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of \$1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-91-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-91-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-91-6).

R865-91-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in

accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-91-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

(b) The Utah portion may be shown:

(i) alongside the total for each item on the federal schedules K and K-1; or

(ii) on an attachment to the Utah return.

(3) A partnership, all of whose partners are resident individuals, shall satisfy the requirement to file a return with the commission by:

(a) maintaining records that show each partner's share of income, losses, credits, and other distributive items; and

(b) making those records available for audit.

R865-91-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight

to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-91-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-91-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-91-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-91-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-91-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year

for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-91-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-414.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

(A) that is transported outside of the enterprise zone; and

(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Taxpayer" means the person claiming the tax credits

in section 63M-1-413.

(g) "Transfer" pursuant to Section 63M-1-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection (4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection (4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

(4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63M-1-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

(6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63M-1-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(7) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(8) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(9) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-91-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward

to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-91-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413.

Taxpayers shall deduct credits authorized by Sections, 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413 against Utah individual income tax due in the following order:

- (1) nonrefundable credits;
- (2) nonrefundable credits with a carryforward;
- (3) refundable credits.

R865-91-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a

professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-91-46. Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

(a) the beginning balance in the account;

(b) the amount contributed to the account;

(c) the account's earnings;

(d) distributions for qualified medical expenses;

(e) distributions for non-medical expenses not subject to penalty;

(f) distributions for non-medical expenses subject to penalty;

(g) the amount of penalty required to be withheld and remitted to the state;

(h) the account administrator's administrative fee charged to the account; and

(i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-91-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-91-23(C).

R865-91-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-91-50. Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

(1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

(2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-91-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

(a) of any change of address of the business;

(b) of a change of character of the business, or

(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;

(c) the person fails to renew its annual business license

with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-91-52. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the greatest possible credit.

R865-91-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-91-54. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Sections 59-10-1014 and 59-10-1106.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Sections 59-10-1014 or 59-10-1106 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under those sections.

KEY: historic preservation, income tax, tax returns, enterprise zones

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Notice of Continuation March 20, 2007

31A-32A-106

53B-8a-112

59-1-1301 through 59-1-1309

59-2-1201

through

59-2-1220

59-6-102

59-7-3

59-10

59-10-103
59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-405.5
59-10-406
through
59-10-408
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59-10-1021
59-10-1023
59-10-1106
59-10-1405
59-13-202
59-13-302
63M-1-401 through 63M-1-414

R865. Tax Commission, Auditing.**R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business, or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;
3. the person fails to renew its annual business license with the Department of Commerce; or
4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

B. If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

C. If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

D. Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales

made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or

compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed

along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible

personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if

federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate

commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
 2. state institutions and departments
 3. counties
 4. municipalities
 5. school districts, public schools
 6. special taxing districts
 7. federal land banks
 8. federal reserve banks
 9. activity funds within the armed services
 10. post exchanges
 11. Federally chartered credit unions
- C. The following are taxable:
1. national banks
 2. federal building and loan associations
 3. joint stock land banks
 4. state banks (whether or not members of the Federal Reserve System)
 5. state building and loan associations
 6. private irrigation companies
 7. rural electrification projects
 8. sales to officers or employees of exempt instrumentalities
- D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.
- E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property

to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a

student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of

antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;
2. must not, when its successive issues are put together, constitute a book;
3. must be intended for circulation among the general public; and
4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

- a) acquisition costs of materials and packaging, including freight;
- b) direct manufacturing labor; and
- c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

(a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

(b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

(2) Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-

12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

(4) If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for Certain

Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) If a purchase consists of items that are exempt from

sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

- a) cash;
- b) wire transfer; or
- c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working

days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission

signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;
2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) repair telephone equipment that retains its character as tangible personal property.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to repair subscriber equipment that is regarded as real property;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and

7. charges for one-way pager services.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

B. The sale, rental or lease of prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill that are required to be paid.

(a) Tax on the required gratuity is due from a private club, even though the club is not open to the public.

(b) Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

(2) Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30

consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

- (a) inspected in this state; or
- (b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski

resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and
2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;
2. the volume of taxable energy delivered to the user; and
3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and
2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution

Pursuant to Utah Code Ann. Section 59-12-1102.

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.

The amount of purchases or uses exempt under Sections 59-12-104(14) and 59-12-104(51) shall be reported to the commission by the person that purchases the items exempt from sales or use tax under those subsections.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;
2. boarding services; or
3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and

2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and
2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and
2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, Aircraft, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Except as provided in Subsections (3) and (4), the provisions of this rule apply to the imposition of sales and use tax under Section 59-12-103 on amounts paid or charged as admission or user fees by jeep, snowmobile, aircraft and boat tour operators, river runners, outfitters, and other sellers providing similar services.

(3) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (3) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(4) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate

commerce.

(5) If payment for a service provided by a seller described in (2) occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(6) If payment for a service provided by a seller described in (2) occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

(7) If payment for a service provided by a seller described in (2) occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.

(8) Payment occurs in Utah if the purchaser:

(a) while at a business location of the seller in the state, presents payment to the seller; or

(b) does not meet the criteria under (8)(a) and is billed for the service at an address within the state.

(9) For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in (2) occurs in Utah.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:

1. aprons for use in a household or shop;
 2. athletic supporters;
 3. baby receiving blankets;
 4. bathing suits and caps;
 5. beach capes and coats;
 6. belts and suspenders;
 7. boots;
 8. coats and jackets;
 9. costumes;
 10. diapers, including disposable diapers, for children and adults;
 11. ear muffs;
 12. footlets;
 13. formal wear;
 14. garters and garter belts;
 15. girdles;
 16. gloves and mittens for general use;
 17. hats and caps;
 18. hosiery;
 19. insoles for shoes;
 20. lab coats;
 21. neckties;
 22. overshoes;
 23. pantyhose;
 24. rainwear;
 25. rubber pants;
 26. sandals;
 27. scarves;
 28. shoes and shoe laces;
 29. slippers;
 30. sneakers;
 31. socks and stockings;
 32. steel toed shoes;
 33. underwear;
 34. uniforms, both athletic and non-athletic; and
 35. wearing apparel.
- B. "Clothing" does not include:
1. belt buckles sold separately;
 2. costume masks sold separately;
 3. patches and emblems sold separately;
 4. sewing equipment and supplies, including:
 - a) knitting needles;
 - b) patterns;
 - c) pins;

d) scissors;

e) sewing machines;

f) sewing needles;

g) tape measures; and

h) thimbles; and

5. sewing materials that become part of clothing, including:

a) buttons;

b) fabric;

c) lace;

d) thread;

e) yarn; and

f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:

- A. breathing masks;
- B. clean room apparel and equipment;
- C. ear and hearing protectors;
- D. face shields;
- E. hard hats;
- F. helmets;
- G. paint or dust respirators;
- H. protective gloves;
- I. safety glasses and goggles;
- J. safety belts;
- K. tool belts; and
- L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

- A. ballet and tap shoes;
- B. cleated or spiked athletic shoes;
- C. gloves, including:
 - (i) baseball gloves;
 - (ii) bowling gloves;
 - (iii) boxing gloves;
 - (iv) hockey gloves; and
 - (v) golf gloves;
- D. goggles;
- E. hand and elbow guards;
- F. life preservers and vests;
- G. mouth guards;
- H. roller skates and ice skates;
- I. shin guards;
- J. shoulder pads;
- K. ski boots;
- L. waders; and
- M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:

1. carried to the third place; and

2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or

2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The provisions of this rule apply to a seller that:

1. is not a restaurant; and
2. provides a purchaser both food and lodging.

B. If a seller does not separately state an amount for tax applicable to food on the invoice, the seller must:

1. pay sales and use tax on the food at the time the seller purchases the food; and
2. include the food in the base that is subject to transient room tax.

C. Subject to D., if a seller separately states an amount for tax applicable to food on the invoice, the seller:

1. may purchase the food tax exempt from sales and use tax as a sale for resale; and
2. may not include the food in the base that is subject to transient room tax.

D. A seller that separately states an amount for tax applicable to food on the invoice must ensure that those amounts are accurately reflected in the seller's records.

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax

exemption referred to in Subsection (1) include purchases, leases, or rentals of:

- (a) land;
- (b) buildings;
- (c) raw materials;
- (d) supplies;
- (e) film;
- (f) services;
- (g) transportation;
- (h) gas, electricity, and other fuels;
- (i) admissions or user fees; and
- (j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

- (a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and
- (b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

KEY: charities, tax exemptions, religious activities, sales tax August 18, 2008

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9-2-1702
9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405

19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R865. Tax Commission, Auditing.**R865-20T. Tobacco Tax.****R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.**

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301.

A. Dealers selling tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

R865-20T-6. Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206.

(1) Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.

(2) Stamps may be delivered to a licensee on credit, provided that the following two conditions are met:

(a) A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.

(b) Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.

(3) In addition to satisfying the conditions of Subsection (2), the licensee shall also comply with Subsection (3)(a), (3)(b), or (3)(c), whichever is appropriate.

(a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.

(b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.

(c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-10. Procedures for the Revocation, Renewal, and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Sections 59-14-202, 59-14-203.5, and 59-14-301.5.

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. A license revoked pursuant to Section 26-42-103 shall be revoked for a period of one year commencing on the date the commission receives notification to revoke by the enforcing agency.

C. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

D. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;
2. shall retain that information in its records; and
3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to another pack of cigarettes.

R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.

(1)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by \$0.75.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(2) The calculation described in Subsection (1) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (1) is greater than 4.

KEY: taxation, tobacco products

August 18, 2008

Notice of Continuation March 19, 2007

- 59-14-102
- 59-14-202
- 59-14-203.5
- 59-14-204
- through
- 59-14-206
- 59-14-212
- 59-14-301
- through
- 59-14-303
- 59-14-401
- 59-14-404

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

- a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

- b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

- 1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

- 2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

- a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

- b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier

whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.
 - a) Compile a list of properties to be appraised by property class.
 - b) Assemble a complete current set of ownership plats.
 - c) Estimate personnel and resource requirements.
 - d) Construct a control chart to outline the process.
2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.
3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.
4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.
 - a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.
 - b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.
 - c) Enter land class information and the calculated agricultural land use value on the appraisal form.
5. Develop a land valuation guideline.
6. Perform an appraisal on improved sold properties considering the three approaches to value.
7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," and "state licensed appraiser" are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

- (i) Course A - Assessment Practice in Utah;
- (ii) Course B - Fundamentals of Real Property Appraisal

;

- (iii) Course C - Mass Appraisal of Land;
- (iv) Course D - Building Analysis and Valuation;
- (v) Course E - Income Approach to Valuation ;
- (vi) Course G - Development and Use of Personal Property Schedules;

(vii) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).

(c) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad

valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, E, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, G, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c); and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, E, H, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all Tax Commission appraiser education and practicum requirements for designation under Subsections (5), (6), and (8); and

(b) has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

(13) Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers contracting the work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

- a) a detailed list of preconstruction cost data is supplied to the responsible agency;
- b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their

respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the

present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

(ii) plus or minus changes in value as a result of factoring; then

(iii) plus or minus changes in value as a result of reappraisal; then

(iv) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate

certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an

assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax

Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- a) a description of the leased or rented equipment;
- b) the year of manufacture and acquisition cost;
- c) a listing, by month, of the counties where the equipment has situs; and
- d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

- a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2008 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (A) documented actual cost of the new or used vehicle; or
- (B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (A) class 6 heavy and medium duty trucks;
- (B) class 13 heavy equipment;
- (C) class 14 motor homes;
- (D) class 17 vessels equal to or greater than 31 feet in length;

(E) class 21 commercial trailers; and

(F) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest.

(d) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when

warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned

computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
07	72%
06	42%
05 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) MRI equipment;
- (D) CAT scanners; and
- (E) mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
07	91%
06	81%
05	71%
04	63%
03	52%
02	42%
01	28%
00 and prior	14%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and

- (K) cash registers and point of sale equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
07	86%
06	73%
05	57%
04	41%
03 and prior	21%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

- (i) Examples of property in this class include:
 - (A) furniture;
 - (B) bars and sinks;
 - (C) booths, tables and chairs;
 - (D) beauty and barber shop fixtures;
 - (E) cabinets and shelves;
 - (F) displays, cases and racks;
 - (G) office furniture;
 - (H) theater seats;
 - (I) water slides; and
 - (J) signs, mechanical and electrical.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
07	92%
06	87%
05	80%
04	74%
03	62%
02	51%
01	38%
00	26%
99 and prior	13%

- (e) Class 6 - Heavy and Medium Duty Trucks.
 - (i) Examples of property in this class include:
 - (A) heavy duty trucks;
 - (B) medium duty trucks;
 - (C) crane trucks;
 - (D) concrete pump trucks; and
 - (E) trucks with well-boring rigs.
 - (ii) Taxable value is calculated by applying the percent good factor against the cost new.
 - (iii) Cost new of vehicles in this class is defined as follows:
 - (A) the documented actual cost of the vehicle for new vehicles; or
 - (B) 75 percent of the manufacturer's suggested retail price.
 - (iv) For state assessed vehicles, cost new shall include the value of attached equipment.
 - (v) The 2008 percent good applies to 2008 models purchased in 2007.
 - (vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
08	90%
07	82%
06	76%
05	69%

04	63%
03	56%
02	50%
01	44%
00	37%
99	31%
98	25%
97	18%
96	12%
95 and prior	6%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

- (i) Examples of property in this class include:
 - (A) medical and dental equipment and instruments;
 - (B) exam tables and chairs;
 - (C) high-tech hospital equipment;
 - (D) microscopes; and
 - (E) optical equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
07	94%
06	91%
05	86%
04	82%
03	73%
02	63%
01	53%
00	43%
99	33%
98	22%
97 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

- (i) Examples of property in this class include:
 - (A) manufacturing machinery;
 - (B) amusement rides;
 - (C) bakery equipment;
 - (D) distillery equipment;
 - (E) refrigeration equipment;
 - (F) laundry and dry cleaning equipment;
 - (G) machine shop equipment;
 - (H) processing equipment;
 - (I) auto service and repair equipment;
 - (J) mining equipment;
 - (K) ski lift machinery;
 - (L) printing equipment;
 - (M) bottling or cannery equipment;
 - (N) packaging equipment; and
 - (O) pollution control equipment.
- (ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
 - (iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):
 - (I) VGO (Vacuum Gas Oil) reactor;
 - (II) HDS (Diesel Hydrotreater) reactor;
 - (III) VGO compressor;
 - (IV) VGO furnace;
 - (V) VGO and HDS high pressure exchangers;
 - (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
07	94%
06	91%
05	86%
04	82%
03	73%
02	63%
01	53%
00	43%
99	33%
98	22%
97 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
07	96%
06	94%
05	91%
04	90%
03	83%
02	76%
01	68%
00	60%
99	52%
98	44%
97	35%
96	27%
95	18%
94 and prior	10%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
07	62%
06	46%
05	21%
04	9%
03 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2008 model equipment purchased in 2007 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
07	61%
06	57%
05	54%
04	51%
03	47%
02	44%
01	41%
00	37%
99	34%
98	30%
97	27%
96	24%
95	20%
94 and prior	17%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2008 percent good applies to 2008 models purchased in 2007.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
08	90%
07	64%
06	61%
05	58%
04	55%
03	51%
02	48%
01	45%
00	42%
99	39%
98	35%
97	32%
96	29%
95	26%
94	23%
93	19%
92 and prior	16%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;

- (C) wire bonding equipment;
 - (D) encapsulation equipment;
 - (E) semiconductor test equipment;
 - (F) clean room equipment;
 - (G) chemical and gas systems related to semiconductor manufacturing;
 - (H) deionized water systems;
 - (I) electrical systems; and
 - (J) photo mask and wafer manufacturing dedicated to semiconductor production.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
07	47%
06	34%
05	24%
04	15%
03 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

- (i) Examples of property in this class include:
- (A) billboards;
 - (B) sign towers;
 - (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators; and
 - (F) bulk storage tanks.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
07	98%
06	96%
05	95%
04	94%
03	92%
02	89%
01	83%
00	78%
99	72%
98	65%
97	60%
96	54%
95	48%
94	43%
93	37%
92	30%
91	22%
90	15%
89 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
- (A) houseboats equal to or greater than 31 feet in length;
 - (B) sloops equal to or greater than 31 feet in length; and
 - (C) yachts equal to or greater than 31 feet in length.
- (ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
- (A) is not included in Class 17;
 - (B) may not be valued using Table 17; and
 - (C) is subject to an age-based uniform fee under Section 59-2-405.2.
- (iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
- (iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this

class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
- (B) the documented actual cost of new or used property in this class.
- (v) The 2008 percent good applies to 2008 models purchased in 2007.
- (vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
08	90%
07	65%
06	63%
05	60%
04	58%
03	56%
02	54%
01	52%
00	50%
99	48%
98	45%
97	43%
96	41%
95	39%
94	37%
93	35%
92	33%
91	30%
90	28%
89	26%
88	24%
87 and prior	22%

(q) Class 17a - Vessels Less Than 31 Feet in Length
 (i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

- (i) Examples of property in this class include:
- (A) oil and gas exploration equipment;
 - (B) distillation equipment;
 - (C) wellhead assemblies;
 - (D) holding and storage facilities;
 - (E) drill rigs;
 - (F) reinjection equipment;
 - (G) metering devices;
 - (H) cracking equipment;
 - (I) well-site generators, transformers, and power lines;
 - (J) equipment sheds;
 - (K) pumps;
 - (L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
07	98%
06	97%
05	94%
04	93%
03	85%
02	77%
01	68%
00	59%
99	50%
98	40%
97	31%
96	21%
95 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2008 percent good applies to 2008 models purchased in 2007.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
08	95%
07	89%
06	83%
05	78%
04	73%
03	67%
02	62%
01	57%
00	52%
99	46%
98	41%
97	36%
96	30%
95	25%
94	20%
93	14%
92 and prior	9%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

(i) Examples of property in this class include:

- (A) kit-built aircraft;
- (B) experimental aircraft;
- (C) gliders;
- (D) hot air balloons; and
- (E) any other aircraft requiring FAA registration.

(ii) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

(iii) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
07	75%
06	71%
05	67%
04	63%
03	59%
02	55%
01	51%
00	47%
99	43%
98	39%
97	35%
96 and prior	31%

(y) Class 24 - Leasehold Improvements.

(i) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
07	94%
06	88%
05	82%
04	77%
03	71%
02	65%
01	59%
00	54%
99	48%
98	42%
97	36%
96 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts

manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges;
- (E) aircraft parts manufacturing test equipment; and
- (F) aircraft parts manufacturing fixtures.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
07	86%
06	73%
05	58%
04	42%
03	22%
02 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
07	97%
06	95%
05	92%
04	90%
03	87%
02	84%
01	82%
00	79%
99	77%
98	74%
97	71%
96	69%
95	66%
94	64%
93	61%
92	58%
91	56%
90	53%
89	51%
88	48%
87	45%
86	43%
85	40%
84	38%
83	35%
82	32%
81	30%
80	27%
79	25%
78	22%
77	19%
76	17%
75	14%
74	12%
73 and prior	9%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2008.

R884-24P-34. Use of Sales or Appraisal Information

Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;
2. the property parcel, account, or serial number;
3. the location of the property;
4. the tax year in which the exemption was originally granted;
5. a description of any change in the use of the real or personal property since January 1 of the prior year;
6. the name and address of any person or organization conducting a business for profit on the property;
7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
8. a description of any personal property leased by the owner of record for which an exemption is claimed;
9. the name and address of the lessor of property described in B.8.;
10. the signature of the owner of record or the owner's authorized representative; and
11. any other information the county may require.

C. The annual statement shall be filed:

1. with the county legislative body in the county in which the property is located;
2. on or before March 1; and
3. using:
 - a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record

of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
 2. property identification number;
 3. description and location of the property; and
 4. full market value of the property.
- B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
 - (ii) storage facilities for railroad operations;
 - (iii) communication facilities; and
 - (iv) spur tracks outside of RR-ROW.
- (d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
- (ii) grocery stores;
- (iii) apartments;
- (iv) residences; and
- (v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed

on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the

Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1),

betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of-service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the

assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other

correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential

exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (1) the owner of record of the property;
- (2) the property parcel number;
- (3) the location of the property;
- (4) the basis of the owner's knowledge of the use of the property;
- (5) a description of the use of the property;
- (6) evidence of the domicile of the inhabitants of the property; and
- (7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:

- (1) on a form provided by the county; or
- (2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2008 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county.

If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	820
2) Cache	690
3) Carbon	540
4) Davis	840
5) Emery	525

6) Iron	815
7) Kane	450
8) Millard	800
9) Salt Lake	705
10) Utah	735
11) Washington	655
12) Weber	800

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	720
2) Cache	590
3) Carbon	440
4) Davis	740
5) Duchesne	495
6) Emery	425
7) Grand	410
8) Iron	715
9) Juab	460
10) Kane	350
11) Millard	700
12) Salt Lake	605
13) Sanpete	550
14) Sevier	570
15) Summit	475
16) Tooele	460
17) Utah	635
18) Wasatch	500
19) Washington	555
20) Weber	700

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	565
2) Box Elder	570
3) Cache	440
4) Carbon	290
5) Davis	590
6) Duchesne	345
7) Emery	275
8) Garfield	220
9) Grand	260
10) Iron	565
11) Juab	310
12) Kane	200
13) Millard	550
14) Morgan	395
15) Piute	355
16) Rich	190
17) Salt Lake	455
18) San Juan	180
19) Sanpete	400
20) Sevier	420
21) Summit	325
22) Tooele	310
23) Uintah	385
24) Utah	485
25) Wasatch	350
26) Washington	405
27) Wayne	335
28) Weber	550

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	465
2) Box Elder	470
3) Cache	340
4) Carbon	190
5) Daggett	220
6) Davis	490
7) Duchesne	245
8) Emery	175

9) Garfield	120
10) Grand	160
11) Iron	465
12) Juab	210
13) Kane	100
14) Millard	450
15) Morgan	295
16) Piute	255
17) Rich	90
18) Salt Lake	355
19) San Juan	80
20) Sanpete	300
21) Sevier	320
22) Summit	225
23) Tooele	210
24) Uintah	285
25) Utah	385
26) Wasatch	250
27) Washington	305
28) Wayne	235
29) Weber	450

27) Wayne	170
28) Weber	305

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	50
2) Box Elder	85
3) Cache	100
4) Carbon	50
5) Davis	50
6) Duchesne	65
7) Garfield	50
8) Grand	50
9) Iron	55
10) Juab	50
11) Kane	50
12) Millard	50
13) Morgan	65
14) Rich	50
15) Salt Lake	55
16) San Juan	50
17) Sanpete	60
18) Summit	50
19) Tooele	50
20) Uintah	60
21) Utah	50
22) Wasatch	50
23) Washington	50
24) Weber	80

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	640
2) Box Elder	695
3) Cache	640
4) Carbon	640
5) Davis	695
6) Duchesne	640
7) Emery	640
8) Garfield	640
9) Grand	640
10) Iron	640
11) Juab	640
12) Kane	640
13) Millard	640
14) Morgan	640
15) Piute	640
16) Salt Lake	640
17) San Juan	640
18) Sanpete	640
19) Sevier	640
20) Summit	640
21) Tooele	640
22) Uintah	640
23) Utah	710
24) Wasatch	640
25) Washington	760
26) Wayne	640
27) Weber	695

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	10
2) Box Elder	50
3) Cache	65
4) Carbon	15
5) Davis	15
6) Duchesne	30
7) Garfield	15
8) Grand	15
9) Iron	20
10) Juab	15
11) Kane	15
12) Millard	15
13) Morgan	30
14) Rich	15
15) Salt Lake	20
16) San Juan	15
17) Sanpete	25
18) Summit	15
19) Tooele	15
20) Uintah	25
21) Utah	15
22) Wasatch	15
23) Washington	15
24) Weber	45

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	255
2) Box Elder	250
3) Cache	265
4) Carbon	130
5) Daggett	160
6) Davis	270
7) Duchesne	165
8) Emery	130
9) Garfield	100
10) Grand	125
11) Iron	250
12) Juab	150
13) Kane	110
14) Millard	195
15) Morgan	185
16) Piute	175
17) Rich	105
18) Salt Lake	225
19) Sanpete	195
20) Sevier	200
21) Summit	205
22) Tooele	185
23) Uintah	195
24) Utah	240
25) Wasatch	210
26) Washington	220

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	88
2) Box Elder	72
3) Cache	75
4) Carbon	56
5) Daggett	60
6) Davis	66
7) Duchesne	70
8) Emery	70
9) Garfield	80

10) Grand	76
11) Iron	68
12) Juab	70
13) Kane	85
14) Millard	84
15) Morgan	60
16) Piute	87
17) Rich	70
18) Salt Lake	72
19) San Juan	72
20) Sanpete	69
21) Sevier	70
22) Summit	78
23) Tooele	77
24) Uintah	74
25) Utah	60
26) Wasatch	57
27) Washington	65
28) Wayne	92
29) Weber	74

26) Wasatch	12
27) Washington	13
28) Wayne	18
29) Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1) Beaver	7
2) Box Elder	6
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	6
10) Grand	5
11) Iron	6
12) Juab	5
13) Kane	5
14) Millard	6
15) Morgan	6
16) Piute	6
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	6
24) Uintah	6
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	6
29) Weber	6

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	28
2) Box Elder	23
3) Cache	24
4) Carbon	16
5) Daggett	17
6) Davis	21
7) Duchesne	22
8) Emery	21
9) Garfield	25
10) Grand	22
11) Iron	20
12) Juab	21
13) Kane	26
14) Millard	26
15) Morgan	19
16) Piute	27
17) Rich	23
18) Salt Lake	22
19) San Juan	22
20) Sanpete	21
21) Sevier	21
22) Summit	23
23) Tooele	24
24) Uintah	23
25) Utah	20
26) Wasatch	18
27) Washington	21
28) Wayne	28
29) Weber	23

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	18
2) Box Elder	15
3) Cache	15
4) Carbon	12
5) Daggett	12
6) Davis	13
7) Duchesne	14
8) Emery	14
9) Garfield	16
10) Grand	15
11) Iron	14
12) Juab	14
13) Kane	17
14) Millard	17
15) Morgan	12
16) Piute	17
17) Rich	14
18) Salt Lake	14
19) San Juan	15
20) Sanpete	14
21) Sevier	14
22) Summit	15
23) Tooele	15
24) Uintah	14
25) Utah	12

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale

procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value

of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104

is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards,

design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or

alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c)(i) Wind Power Generating Plants.

(ii) Due to the unique financial nature of operating wind power generating plants, the following tax credits provided to entities operating wind power generating plants shall be identified and removed as intangible property from the indicators of value considered under this rule:

(A) renewable electricity production credits for wind power generation pursuant to Section 45, Internal Revenue Code; and

(B) refundable wind energy tax credits pursuant to Section 59-7-614(2)(c).

884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

884-24P-64. Determination and Application of Taxable

Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and
2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and
2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:

- a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
 - b) demonstrated by clear and convincing evidence.
2. Factual error includes:
- a) a mistake in the description of the size, use, or ownership of a property;
 - b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
 - c) an error in the classification of a property that is eligible for a property tax exemption under:
 - (1) Section 59-2-103; or
 - (2) Title 59, Chapter 2, Part 11;
 - d) valuation of a property that is not in existence on the lien date; and
 - e) a valuation of a property assessed more than once, or by

the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

- a) the Utah Housing Corporation project identification number;
- b) the project name;
- c) the project address;
- d) the city in which the project is located;
- e) the county in which the project is located;
- f) the building identification number assigned by the Internal Revenue Service for each building included in the project;
- g) the building address for each building included in the project;
- h) the total apartment units included in the project;
- i) the total apartment units in the project that are eligible for low-income housing tax credits;
- j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;
- k) whether the project is:
 - (1) the rehabilitation of an existing building; or
 - (2) new construction;
- l) the date on which the project was placed in service;
- m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;	59-2-103
o) the maximum annual state low-income housing tax credits for which the project is eligible; and	59-2-103.5
p) for each apartment unit included in the project:	59-2-104
(1) the number of bedrooms in the apartment unit;	59-2-201
(2) the size of the apartment unit in square feet; and	59-2-210
(3) any rent limitation to which the apartment unit is subject; and	59-2-211
2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and	59-2-301
3. construction cost certifications for the project received from the low-income housing project owner.	59-2-301.3
C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.	59-2-302
D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:	59-2-303
a) operating statement;	59-2-305
b) rent rolls; and	59-2-306
c) federal and commercial financing terms and agreements.	59-2-401
2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.	59-2-402
E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.	59-2-404

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of \$3,500 or less.	59-2-405
(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.	59-2-405.1
(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value of \$3,500 or less shall be made after apportionment.	59-2-406
(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:	59-2-508
(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or	59-2-515
(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has \$3,500 or less of taxable tangible personal property in the county.	59-2-701

KEY: taxation, personal property, property tax, appraisals March 28, 2008
Art. XIII, Sec 2
Notice of Continuation March 12, 2007

9-2-201
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102

R912. Transportation, Motor Carrier, Ports of Entry.**R912-14. Changes in Utah's Oversize/Overweight Permit Program - Semitrailer Exceeding 48 Feet Length.****R912-14-1. Purpose.**

Semi-trailers exceeding 48 feet, and up to 53 feet in length will no longer require oversize permits when operating on or within one mile of routes designated by the Utah Department of Transportation.

R912-14-2. Authority.

This rule is authorized under Section 72-7-402.

R912-14-3. Provisions.

- (1) Designated routes include: All State and US Highways.
- (2) Vehicles operating more than one mile from the routes listed above will require an oversize permit. These permits will be available on a single trip, semi-annual or annual basis.
- (3) The following restrictions will continue to apply to trailers exceeding 48 feet in length on all highways in Utah.
 - (a) Dual or super single tires (14 inches or greater) are required on all trailer axles.
 - (b) Rear under ride protection is required.
 - (c) The maximum gross vehicle weight will be determined by Bridge Table B Extended, Section 72-7- 404.
- (4) Trailers exceeding 53 feet will require a single trip permit. Trailers exceeding 57 feet will require a special approval prior to entering the state. All of the restrictions in the preceding paragraphs apply also to these trailers.

KEY: trucks, permits

July 18, 2005

Notice of Continuation August 7, 2008

72-7-402

R918. Transportation, Operations, Maintenance.**R918-4. Using Volunteer Groups for the Adopt-a-Highway Program.****R918-4-1. Purpose of Procedure.**

To establish a procedure for using volunteer groups for litter pickup. To provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum.

R918-4-2. Application.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, and the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

R918-4-3. Conditions to Participation.

If the application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

- (1) the location of the right-of-way;
- (2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;
- (3) safety rules;
- (4) information concerning safety apparel that must be used and that is recommended;
- (5) the name of the entity or organization that is applying for the permit;
- (6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;
- (7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;
- (8) a date when the agreement will terminate, along with any automatic renewal provisions;
- (9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;
- (10) no person under the age of 11 may participate in the litter pick-up program or be on the right-of-way;
- (11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;
- (12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;
- (13) volunteers shall stay off the traveled areas of Interstate Freeways at all times, except when crossing in the manner specified in paragraph (12);
- (14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;
- (15) work shall be done during daylight hours;
- (16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;
- (17) clean up the assigned right-of-way at least three times

a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities like the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, closed containers.

R918-4-4. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization that is assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-5. Recognition Signs.

If the applicant's authorized representative (contact person) signs the contract sent to him or her by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on a sign. The name may be edited to comply with space limitations.

R918-4-6. Replacement of Signs.

UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

R918-4-7. UDOT's Responsibilities.

UDOT shall:

- (1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;
- (2) furnish the litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel.

**KEY: adopt-a-highway, highways, transportation
July 20, 2004**

Notice of Continuation August 25, 2008

72-1-201