

R15. Administrative Services, Administrative Rules.**R15-1. Administrative Rule Hearings.****R15-1-1. Authority.**

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) In addition:

- (a) "hearing" means an administrative rule hearing; and
- (b) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63G-3-601.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by

law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

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R15. Administrative Services, Administrative Rules.

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R15-2. Public Petitioning for Rulemaking.**R15-2-1. Authority.**

As required by Subsection 63G-3-601(2), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "rule change" means:

(i) making a new rule;

(ii) amending, repealing, or repealing and reenacting an existing rule;

(iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;

(iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or

(v) any combination of the above.

(b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

R15-2-3. Petition Procedure.

(1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.

(2) The agency receiving the petition shall stamp the petition with the date of receipt.

R15-2-4. Petition Form.

The petition shall:

(a) be clearly designated "petition for a rule change";

(b) state the petitioner's name;

(c) state the petitioner's interest in the rule, including relevant affiliation, if any;

(d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;

(e) state the approximate wording of the requested rule change;

(f) describe the reason for the rule change;

(g) include an address, an E-mail address when available, and telephone where the petitioner can be reached during regular business hours; and

(h) be signed by the petitioner.

R15-2-5. Petition Consideration And Disposition.

(1) The agency head or designee shall:

(a) review and consider the petition;

(b) write a response to the petition stating:

(i) that the petition is denied and reasons for denial, or

(ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and

(c) send the response to the petitioner within the time frame provided by Section 63G-3-601.

(2) The petitioned agency may, within the time frame provided by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.

(3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.

(4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

R15. Administrative Services, Administrative Rules.**R15-3. Definitional Clarification of Administrative Rule.****R15-3-1. Authority, Purpose, and Definitions.**

(1) This rule is authorized under Subsection 63G-3-402(1) which requires the division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63G-3-102.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).

(4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The division has authority over nonsubstantive content under Subsections 63G-3-402(2) and (3), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

(1) All rules shall be in a format that permits their compatibility with the division's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The division shall issue and provide to agencies instructions and standards for formatting rules.

R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(13).

For the purposes of Subsection 63G-3-301(13), the phrase "statutory provision that requires the rulemaking" means a state statutory provision that explicitly mandates rulemaking.

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R15. Administrative Services, Administrative Rules.**R15-4. Administrative Rulemaking Procedures.****R15-4-1. Authority and Purpose.**

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "eRules" means the Division's administrative rule filing application that agencies use to file rules and notices;

(g) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63G-3-301(2) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period for a Proposed Rule**and a Change in Proposed Rule.**

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

R15-4-5a. Notice of the Effective Date for a Proposed Rule.

(1)(a) Pursuant to Subsection 63G-3-301(9), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the rule text as published is the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the division or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a

subsequent notice in the bulletin.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63G-3-102(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63G-3-303(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The division interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with

regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63G-3-301(3), 63G-3-303(1), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

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63G-3-303

63G-3-304

63G-3-402

R15. Administrative Services, Administrative Rules.**R15-5. Administrative Rules Adjudicative Proceedings.****R15-5-1. Purpose.**

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63G-3-603.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the division determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedures, administrative law

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Notice of Continuation September 22, 2010 63G-4-202

63G-4-203

63G-4-503

R131. Capitol Preservation Board (State), Administration.
R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

R131-13-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

R131-13-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

R131-13-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" is as defined in Subsection 63C-9-403(1)(a) and includes only those employees that live and work in the state of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than the use of the term employee for purposes of state of Utah Workers' Compensation laws along with their dependents.

(d) "State" means the state of Utah.

R131-13-4. Applicability of Rule.

(1) Except as provided in Subsection R131-13-4(2) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, or on behalf of the Board, on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract, at any tier, is in the amount of \$750,000 or greater.

(2) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R131-13 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

R131-13-5. Contractor to Comply with Section 63C-9-403.

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this Rule R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R131-13-7. Requirements and Procedures a Contractor Must Follow.

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, including consultants, designers and others under contract with the Board or the executive director that is subject to the requirements of Rule R131-13 no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the executive director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees; and

(b) the contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors, including subconsultants, at any tier that are subject to the requirements of Rule R131-13.

(2) Recertification. The executive director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63C-9-403(1)(c)(i) and (iii) is met by the contractor if the contractor provides the executive director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor; or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Subsection R131-13-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

(a) As delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>, a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the State, in which:

(i) The employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the State; and

(ii) for purposes of calculating actuarial equivalency under this Subsection R131-13-7(3)(a):

(A) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels, the deductible is \$750 per individual and \$2,250 per family; and the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

(B) dental coverage is not required; and

(C) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either;

(A) the lowest deductible permitted for a federally

qualified high deductible health plan; or

(B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the State.

(4) The health insurance must be available upon the first day of the calendar month following the initial ninety days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 in any annual submittal. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(7) Notwithstanding any prequalification process, any contract subject to Rule R131-13 shall contain a provision requiring compliance with Rule R131-13 from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under Rule R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be Imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Rule R131-13 may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this Rule R131-13 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R131-13-7(8)(c)(i) as provided in Subsection 63C-9-403(7)(a)(ii).

R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts
September 22, 2010**

**63C-9-403
63C-9-301(3)(a)**

R131. Capitol Preservation Board (State), Administration.
R131-15. State Construction Contracts and Drug and Alcohol Testing.

R131-15-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R131-15-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) as well as Subsection 63G-6-604(4).

R131-15-3. Definitions.

(1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R131-15:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R131-15-4(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Capitol Preservation Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by the Capitol Preservation Board.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the Executive Director of the Capitol Preservation Board.

(c) "State" as used throughout Rule R131-15 means the State of Utah except that it also includes those entities described in Subsection R131-15-3(1)(e) as the term "state" is used in Subsection R131-15-7(5).

R131-15-4. Applicability.

(1) Except as provided in Section R131-15-5, on and after July 1, 2010, the Board may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the Capitol Preservation Board that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R131-15-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the Board, which shall be demonstrated by a provision in the contract where the contractor acknowledges this Rule R131-15 and agrees to comply with all aspects of this Rule R131-15, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R131-15-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R131-15-4(2), if a contractor or subcontractor fails to comply with Subsection R131-15-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R131-15.

(b) On and after July 1, 2010, the Board shall include in a state construction contract a reference to this Rule R131-15.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R131-15-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R131-15-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R131-15-4(1) is that the contractor, by executing the construction contract with the Board, is deemed to certify to the Board that the contractor, and all subcontractors under the contractor that are subject to Subsection R131-15-4(1), shall comply with all provisions of this Rule R131-15 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the Executive Director in writing information that indicates compliance with the provisions of Rule R131-15 and Section 63G-6-604.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk

to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R131-15(4)(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies or the similar rules of the Board; and

(b) may not be used by the Board, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After the Board enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.

(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R131-15, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R131-15-5. Non-applicability.

(1) This Rule R131-15 and Section 63G-6-604 does not apply if the Board determines that the application of this Rule R131-15 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R131-15-6. Not Limit Other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63-6-604 and this Rule R131-15, this Rule R131-15 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: drug and alcohol testing, contractors, contracts

September 22, 2010

63G-6

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

R156-38a-101. Title.

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

R156-38a-102. Definitions.

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

(1) "Affidavit", as required by Subsection 38-11-110(2)(a), means a form affidavit approved by the Division and posted on the Division's website or otherwise made available for public inspection, that establishes the following:

(a) the applicant is an owner as defined in Subsection 38-11-102(17);

(b) the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(c) the amount of the general contract as defined in Subsection 38-11-107(1)(b)(i)(B) and clarified in Subsection R156-38a-102(14);

(d) the original contractor as defined in Subsection 38-11-102(16);

(e) the location of the residence; and

(f) any other information necessary to establish eligibility for the issuance of a certificate of compliance under Subsection 38-11-110(2)(a), as determined by the Division.

(2) "Affidavit of Compliance" means the affidavit submitted by the owner seeking issuance of a certificate of compliance under Subsection 38-11-110(1)(a)(ii).

(3) "Applicant" means either a claimant, as defined in Subsection (4), or a homeowner, as defined in Subsection (8), who submits an application for a certificate of compliance.

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

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

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

(7) "During the construction", as used in Subsection 38-11-204(1)(c)(ii), means beginning at the time the claimant first provides qualified services and throughout the time frame the claimant provides qualified services.

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

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

(10) "Necessary party" includes the Division, on behalf of the fund, and the applicant.

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

(12) "Permissive party" includes:

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

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

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

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

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

(14) "Totals no more", as used in Subsection 38-11-107(1)(b)(ii)(A), means the inclusion of all changes or additions.

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

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

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

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

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

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

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

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

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

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-205.

R156-38a-105a. Adjudicative Proceedings.

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

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

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

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

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

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

(7) A permissive party is required to file a response to a

claim or application for certificate of compliance within 30 days of notification by the Division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application. The response of a permissive party seeking to dispute an owner's affidavit of compliance shall clearly state the basis for the dispute.

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

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

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

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

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

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

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

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

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

(1)(a) A written notice of denial of a claim or certificate of compliance shall be provided to an applicant who submits a complete application if the Division determines that the application does not meet the requirements of Section 38-11-204 or Subsection 38-11-110(1)(a), respectively.

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

(2) An applicant may upon written request receive a single 30 day extension of the time period specified in the notice of incomplete application.

(3) (a) A claimant may for any reason be granted a single request for prolonged status;

(b) A homeowner seeking issuance of a certificate of compliance may be granted prolonged status if the homeowner submits a written request documenting that the homeowner:

(i) can be reasonably expected to complete the application

if an additional extension is granted; or

(ii) has filed a pending action in small claims or district court to resolve a dispute of the affidavit of compliance.

(c) An application under (3)(a) or (3)(b) that is granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

(d) At the end of the one year period, the applicant under (3)(a) or (3)(b) shall be required to either complete the application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-110 or 38-11-204;

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

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

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

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

(i) reactivate the application;

(ii) withdraw the application; or

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

(f) A request for renewal of prolonged status made under Subsection (3)(d) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

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

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

R156-38a-107. Application of Requirements under Subsection 38-11-107(1)(b).

The provisions of Subsection 38-11-107(1)(b) shall apply only to general contracts entered into after May 10, 2010.

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

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

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met:

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

(b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction

Trades Licensing Act at the time the contract was executed; and

(c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or

(2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000."

(3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at www.dopl.utah.gov/rllrf.

R156-38a-109. Format for Instruction and Form Required under Subsection 38-1-11(6).

The instructions and form required under Subsection 38-1-11(6) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-110a. Applications by Homeowners seeking issuance of Certificate of Compliance under Subsection 38-1-110(1)(a)(i) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-1-110(1)(a)(i):

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

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

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

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

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

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

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

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

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

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

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

(3) one of the following:

(a) except as provided in Subsection (7), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

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

(4) credible evidence establishing ownership of the incident residence on the date the written contract between the owner and the contracting entity was entered;

(5) one of the following:

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

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

(c) if neither Subsection (5)(a) nor (b) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract;

(6)(a) an affidavit from the homeowner establishing that the residence is an owner-occupied residence as defined in Subsection 38-1-102(18); or

(b) other credible evidence establishing that the residence is an owner-occupied residence as defined in Subsection 38-1-102(18).

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

(a) the affiant is the homeowner;

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

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

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

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

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

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

R156-38a-110b. Applications by Homeowners seeking issuance of a Certificate of Compliance under Subsection 38-1-110(1)(a)(ii) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-1-110(1)(a)(ii):

(1)(a) the original affidavit of compliance; and

(b) a list of known subcontractors who provided service, labor, or materials under the general contractor.

(2) When an affidavit of compliance is disputed, the owner must submit evidence demonstrating compliance with the requirements specified in Subsection 38-1-110(2)(c)(ii).

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

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

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

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

(2) The amount of special assessments shall be established

by the Division and Board in accordance with the procedures set forth in Section 38-11-206.

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

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

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

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

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

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

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

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

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

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

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

(b) the documents required in Section R156-38a-110a; or

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

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

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

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

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

(2) if the applicant recorded a notice of claim under Section 38-1-7, a copy of that notice establishing the date that notice was filed.

(3) one of the following as applicable:

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

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

(4) one of the following:

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

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the

claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

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

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

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

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

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

(7) one or more of the following:

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

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

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

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

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

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

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

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

(a) one of the following:

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

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

(b) one of the following:

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

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

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

(c) one of the following:

(i) a copy of the certificate of compliance issued by the Division establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

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

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

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

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

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

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

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

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

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

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

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which

payment was due, the Division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

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

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

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

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

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

(2) A licensee with a license classification that requires registration in the fund whose license is on inactive status on the assessment date of any special assessment of the fund, is not required to pay the special assessment during the time the license remains on inactive status.

(3) Before a licensee can reactivate the license, the licensee must pay any special assessment or assessments within the two years prior to the reactivation date.

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

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

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

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

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

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

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

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

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

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

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

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

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

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

(b) If a registrant has authorized the Division to send a renewal notice by email, the email shall be sent to the last email address shown on the Division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of the registrant to maintain a current email address with the Division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

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

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

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

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

KEY: licensing, contractors, liens

September 9, 2010

Notice of Continuation January 7, 2010

38-11-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-41. Speech-Language Pathology and Audiology Licensing Act Rule.

R156-41-101. Title.

This rule is known as the "Speech-Language Pathology and Audiology Licensing Act Rule".

R156-41-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 41, as used in Title 58, Chapters 1 and 41, or this rule:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Clinical externship", as used in Section R156-41-302b, means the same as a clinical fellowship as used in Subsection 58-41-5.5(1)(a)(ii).

(3) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and this rule, means supervision as defined in Subsection R156-1-102a(4)(a).

(4) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(5) "Legal holder of an AuD in audiology", as used in Subsection 58-41-5(1)(c), means an applicant for temporary licensure as an audiologist who holds a letter from an accredited university or college, verifying the applicant is currently enrolled and has completed all the course work in a program of studies necessary to complete a doctors degree in audiology except for the completion of a clinical externship.

(6) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(7) "Substitute supervisor", as used in this rule, means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(8) "Supervision", as used in this rule, means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(9) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-41-502.

R156-41-103. 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 41.

R156-41-104. 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.

R156-41-302a. Qualifications for Licensure - Application Requirements.

In accordance with Section 58-41-5, ASHA certification as a speech-language pathologist or audiologist is one acceptable method to document that an individual has completed the requirements of Subsections 58-41-5(1)(f) and (4)(e).

R156-41-302b. Qualifications for Licensure - Temporary Licensure - Audiology.

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for an audiology license for not more than 12 months to complete a clinical externship required for an AuD under the following conditions:

(1) The licensee shall work under general supervision, as

defined in Subsection R156-1-102a(4)(c), of an audiologist licensed in Utah and approved by the Division.

(2) The supervising audiologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all audiology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising audiologist shall be preapproved by the Division.

R156-41-302c. Qualifications for Licensure - Temporary Licensure - Speech-Language Pathology.

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for a speech-language pathology license for a period of not more than 12 months to complete a clinical fellowship as required by ASHA under the following conditions:

(1) The licensee shall work under the general supervision, as defined in Subsection R156-1-102a(4)(c), of a speech-language pathologist licensed in Utah and approved by the Division.

(2) The supervision speech-language pathologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all speech-language pathology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising speech-language pathologist shall be preapproved by the Division.

R156-41-303. 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 41, is established by rule in Section R156-1-308a.

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

R156-41-304. Continuing Professional Education.

In accordance with Subsection 58-41-12(2), continuing professional education requirements are established as follows:

(1) During each two year period an individual licensed as a speech-language pathologist, speech-language pathologist/audiologist or audiologist shall be required to complete not less than 20 hours of continuing professional education directly related the licensee's professional practice.

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

(3) Continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of speech-language pathology, audiology or both;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for continuing professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

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

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

R156-41-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using an educational title conferred by an organization or institution that is not a regionally accredited college or university;

(2) engaging in sexual intercourse or other sexual contact with a client or patient;

(3) exercising undue influence in a manner as to exploit the client, patient, or supervisee for financial or other personal advantage to the practitioner or a third party;

(4) using or training audiology or speech-language pathology aides as defined in Subsections 58-41-2(5) and (2) and inappropriately failing to follow the standards set forth in Section R156-41-601;

(5) failing to comply with the American Speech-Language Hearing Association's (ASHA) Code of Ethics, March 1, 2010 edition, which is hereby incorporated by reference;

(6) supervising more than two audiology or speech-language pathology temporary licensees at one time;

(7) failing as an audiologist supervisor to comply with any of the requirements of Subsection R156-41-302b(2); and

(8) failing as a speech-language pathologist supervisor to comply with any of the requirements of Subsection R156-41-302c(2).

R156-41-601. Speech-Language Pathology and Audiology Aides.

(1) In accordance with Subsections 58-41-2(5) and (2), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has graduated from an accredited high school or obtained a certificate of equivalency approved by the division.

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more

than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

KEY: licensing, speech-language pathology, audiology

September 21, 2010

58-1-106(1)(a)

Notice of Continuation February 1, 2007

58-1-202(1)(a)

58-41-1

**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)(p) 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)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), 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(39), 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 and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(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(21) and 58-55-102(32), 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 engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) 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(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) 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.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(15) 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(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) 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.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

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(22).

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(21) or 58-55-102(32).

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. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

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. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

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. Incidental work includes the installation of tub liners and wall systems.

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 - Gunnite 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.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

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. The HVAC Contractor scope of practice does not include activities described in this Subsection

under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

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.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

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. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

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, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

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.

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. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

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.

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractor's license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractor's license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

(c) fire alarm installation regulated by the Fire Marshal.

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) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "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.

(6) 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) Unless otherwise provided in this rule, all experience shall be lawfully performed under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.

(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 Subsection (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.

(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.

(d) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(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.

(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 Subsections (6) and (7), 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.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(7) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master 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(1).

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

(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 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. 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, OSHA 10 or OSHA 30 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; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and 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) a commercial continuing education provider providing a program related to the construction trades.

(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 course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit and type of credit (core or professional);
- (vi) the attendee's name; and
- (v) the signature of the course provider.

(3) 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.

(4) 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. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements 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.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7 and 58-55-303(6), which is completed by an employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) 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.

(8) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(9) The Division shall review continuing education courses which have been submitted through the continuing

education registry and approve only those courses which meet the standards set forth under this Section.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week;

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. 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(19), 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;

(e) any of the factors listed in Subsection R156-1-302 which may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee; and

(h) 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 Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program.

R156-55a-602. Contractor License Bonds.

(1) Pursuant to the provisions of Subsection 58-55-306(1)(b), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount of \$50,000 or such higher amount as may be determined by the Division and the Commission as provided for in Subsection R156-55a-602(3). An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses which may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55.

(3) The amount of the bond specified under Subsection R156-55a-602(1) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, including any of its owners holding more than 10 percent interest, indicates the \$50,000 bond is insufficient to reasonably cover risks to the public health, safety and welfare.

**KEY: contractors, occupational licensing, licensing
August 16, 2010 58-1-106(1)(a)
Notice of Continuation November 8, 2006 58-1-202(1)(a)
58-55-101
58-55-308(1)(a)
58-55-102(39)(a)**

R156. Commerce, Occupational and Professional Licensing.**R156-70a. Physician Assistant Practice Act Rule.****R156-70a-101. Title.**

This rule is known as the "Physician Assistant Practice Act Rule".

R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.

(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.

R156-70a-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 70a.

R156-70a-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.

R156-70a-302. Qualification for Licensure - Examination Requirements.

In accordance with Subsection 58-70a-302(5), the examinations which must be successfully passed by applicants for licensure as a physician assistant are:

(1) the National Commission on Certification of Physician Assistants (NCCPA); and

(2) the Utah Physicians Assistant Law and Rules Examination.

R156-70a-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 70a is established by rule in Section R156-1-308a.

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

R156-70a-304. Continuing Education.

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours in each preceding two year licensure cycle.

(2) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(3) Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(4) A maximum of six hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.

(5) Where a licensee submits documentation to the Division of current national certification by NCCPA, such

certification shall be deemed to meet the requirements in Subsection (1).

(6) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion.

(7) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (6) above.

(8) A licensee shall be responsible for maintaining competent records of completed continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing professional education and to demonstrate it meets the requirements under this section. If requested, the licensee shall provide documentation of completed continuing education.

(9) Continuing professional education for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

R156-70a-305. Exemptions from Licensure.

"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervision physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can

competently supervise.

KEY: licensing, physician assistants

September 13, 2010

58-70a-101

Notice of Continuation February 27, 2007

58-1-106(1)(a)

58-1-202(1)(a)

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

June 21, 2006

61-2-5.5

Notice of Continuation September 27, 2010 63G-4-102(5)

R230. Community and Culture, Indian Affairs.**R230-1. Native American Grave Protection and Repatriation.****R230-1-1. General Policy Statement Regarding Native American Burials.**

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "sacred ground".

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands or non-federal lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository, including museums, where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.
7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.
8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.
9. "State land" as defined by 9-9-402.
10. "Nonfederal land" as defined by 9-9-402.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands or non-federal lands.

R230-1-6. Ascertaining Lineal Descendants and Cultural Affiliation.

1. Each agency, in consultation with Antiquities Section, Utah Division of State History, shall compile an inventory of acquired ancient human remains and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible, and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all

interested parties.

b. The inventory of lineal descent and cultural affiliation shall be completed in consultation with appropriate tribes and tribal government representatives, which consultation shall be coordinated and facilitated by the Division.

2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

R230-1-7. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains and a lineal descendant ascertained by the Agency, the Director shall notify any known or possible lineal descendants, Indian tribes in Utah, and all other interested parties within 30 days.

2. If no lineal descendants can be ascertained, and if the cultural affiliation of the remains has been determined by the Agency, the Director shall notify within 30 days all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person.

3. If no lineal descendant or cultural affiliation to any tribe can be ascertained, or the geographic location of discovery of the remains is unknown, the Director shall notify all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, of known information regarding the remains.

4. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing an intent to claim by posting the notice in a public place and/or by including it in tribal news media.

5. Any interested party may request notification of the discovery and repatriation process of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-8. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their intent to claim within forty-five days from the date that notification is sent out by the Division. Lineal descendants or Indian tribes will have sixty days from the Division's receipt of the Intent to Claim notice to provide substantiating documentation.

R230-1-9. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership with an intent to claim notice regarding a claim of lineal descent or cultural affiliation, the Director shall request

a written petition from the claimant, substantiating the claim. The claimant will have 60 days from the Divisions receipt of the intent to claim notice, to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the claimant makes a substantial showing of lineal descent or cultural affiliation the Agency will make a determination of lineal descent or cultural affiliation and grant ownership of the remains to that claimant.

2. When two or more claimants have asserted claims of ownership with intent to claim notices for lineal descent or cultural affiliation, the Director shall request a written petition from the claimants, substantiating the claims. The claimants will have 60 days from the Division's receipt of the intent to claim notices to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the agency determines both claimants have made a substantial showing of lineal descent or cultural affiliation, the Director and Committee shall facilitate a resolution of the competing claims. If the facilitation of resolution between claimants does not result in resolution, determination of ownership shall be made by the Agency in consultation with the Director and Committee based upon a preponderance of the evidence in an informal proceeding which shall comply with Section 63G-4-101 et seq., the Utah Administrative Procedures Act.

R230-1-10. Procedure for the Resolution of Claims for Lineal Descent or Cultural Affiliation.

1. After the expiration of time for the substantiating documents of claims regarding lineal descent or cultural affiliation to be submitted has occurred, and the agency has determined all claims have made a substantial showing, the Director, in consultation with the Agency and Committee, shall schedule a time within 60 days to facilitate the resolution of the competing claims and shall notify the claimants of such date.

2. In an informal proceeding, the Director and Committee shall meet with competing claimants and facilitate the resolution between claimants if at all possible.

3. If the facilitation of resolution of the competing claims does not result in resolution, the Agency shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence, and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, oral tradition, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

4. The Agency shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains, by a preponderance of the evidence.

R230-1-11. Adjudication of Disputed Claims.

1. If any party is dissatisfied with the Agency's or Director's decision, the claimants may appeal the decision to the Committee. The Committee shall review the decision and issue findings relating to the identity of, the cultural affiliation of the remains, or an aboriginal land use determination, which shall be used in accordance with 9-9-403(6).

2. A copy of the Committee's findings and the Director's or Agency's decision shall be mailed to each of the claimants and interested parties who have designated a contact person along with a notice explaining the procedure for seeking an appeal of the Director's or Agency's decision in the District

Court where the Agency that has temporary possession of the remains pending this process, is located.

3. If no party has filed an appeal in the District Court within 30 days, the Director's or Agency's decision shall be binding upon the parties.

R230-1-12. Disposition of Unidentified and Unclaimed Remains.

1. When lineal descent and cultural affiliation cannot be determined, and the Division has notified all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, and has received no intent to claim notices within 30 days, then the Director shall, upon recommendation of the agency and in consultation with the Committee, coordinate at least every six months, the placement of the ancient human remains in the Indian burial vault or other designated cemetery until such time as further information regarding the identity and owner of the remains can be obtained.

2. If the remains have not been excavated and have gone through the determination of ownership and control process and are unclaimed, the remains may be permanently left in place upon final approval by the agency and in consultation with the Director.

3. If the remains have been excavated and have gone through the determination of ownership process and are unclaimed, the remains shall be re-interred in the Indian Burial Repository or other designated cemeteries throughout the state.

R230-1-13. Re-interment of Ancient Human Remains.

1. Annually, or as needed, the Director shall present to the Committee an inventory of remains that have completed the process of repatriation and have been determined to be without a lineal descendant or cultural affiliation or unclaimed, that reside in the burial vault. The Director shall include a plan for interment regarding the final resting place of the remains in either the burial vault or designated cemetery, and with approval of the Committee, the Director shall coordinate the interment of the remains.

R230-1-14. Role and Responsibilities of Committee.

1. The Committee shall meet quarterly or as deemed necessary to monitor the identification process described in R230-1-10 conducted by the Agency for lineal descent or cultural affiliation claims per 9-9-405(3).

R230-1-15. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency or non-federal agency.

2. If the remains have already been excavated pursuant to R212-4, the owner or person or tribe in control of the remains may then take possession of the remains from the agency that has temporary possession of the remains.

R230-1-16. Scientific Investigation of Remains.

1. No scientific investigation beyond that allowed in 9-9-4 shall be conducted on remains except upon written permission granted by the Director in consultation with the Committee.

2. If the ownership of the remains has not been determined, and further information regarding the identity and owner of remains becomes available, the agency or other interested parties may petition the Committee to recommend removal of the remains from the Indian burial vault or designated cemetery for testing.

a. The agency will provide to the Committee and Director

a report specifying the nature and duration of the testing and the Committee will determine per majority vote whether to grant the removal request.

R230-1-17. Savings Provision.

1. If, following the conclusion of the process to determine ownership of human remains using lineal descent and cultural affiliation, an owner cannot be identified by the responsible agency, tribes may submit claims based on aboriginal land to the Division. The Director shall make a determination of ownership based upon findings of the Committee and in consultation with the landowner.

KEY: Indian affairs, state lands, Native American remains
July 16, 2008 9-9-104
Notice of Continuation September 16, 2010 9-9-403
9-9-405

R277. Education, Administration.**R277-444. Distribution of Funds to Arts and Science Organizations.****R277-444-1. Definitions.**

A. "Arts organization (organization)" means a non-profit professional artistic organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

B. "Arts and science subsidy program" means groups that have participated in the RFP program and have been determined by the Board to be providing valuable services in the schools. They do not qualify as professional outreach programs.

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

D. "Cost effectiveness" means maximization of the educational potential of the resources available through the professional organization, not using POPS funding for costs that would be expended necessarily for the maintenance and operation of the organization.

E. "Educational soundness" means that learning activities or programs:

(1) are designed for the community and grade level being served, including suggested preparatory activities and Core-relevant follow-up activities;

(2) feature literal interaction of students and teachers with professional artists and scientists;

(3) focus on those specific Life Skills and Arts or Science Core Curricula concepts and skills; and

(4) show continuous improvement of services guided by analysis of evaluative tools.

F. "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

G. "Non-profit organization" means an organization no part of the income of which, is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

H. "Professional excellence" means the organization:

(1) has been juried or reviewed, based on criteria for artistic or scientific excellence, by a panel of recognized and qualified critics in the appropriate discipline;

(2) has received recognitions of excellence through an award, a prize, a grant, a commission, an invitation to participate in a recognized series of presentations in a well-known venue; and

(3) includes a recognized and qualified professional in the appropriate field who has created an artistic or scientific project or composition specifically for the organization to present; or

(4) any combination of criteria.

I. "Professional outreach programs (POPS) in the schools" means those established arts and science organizations which received line item funding directly from the Utah State Legislature prior to 2004. These organizations have demonstrated the capacity to mobilize programmatic resources and focus them systematically in improving teaching and learning in schools statewide.

G. "Request for proposal (RFP)" means a competitive application process used to identify programs that best meet requirements established by the Board.

H. "RFP program" means arts and science organizations that receive one-time funding through application to the USOE.

I. "School visits" means performances, lecture demonstrations/presentations, in-depth instructional workshops, residencies, side-by-side mentoring, and exhibit tours by professional arts and science groups in the community.

J. "Science organization (organization)" means a non-profit professional science organization that provides science-related services, performances or instruction to the Utah community.

K. "State Core Curriculum" means those standards of

learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

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

R277-444-2. 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 and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of the arts and science program is to provide opportunities for students to develop and use the knowledge, skills, and appreciation defined in the arts and science Core curricula through in-depth school instructional services, performances or presentations in school and theatres, or arts or science museum tours.

C. This rule also provides criteria for the distribution of funds appropriated by the Utah Legislature for this program.

R277-444-3. Criteria for Eligibility, Applications, and Funding for POPS Organizations.

A. Established professional outreach program in the schools (POPS) organizations shall be eligible for funding under the POPS program applications and funding criteria and not eligible to apply for the RFP or arts and science subsidy programs.

B. Documentation of an organization's non-profit status, shall be provided in the annual evaluation report described in R277-444-6.

C. Every four years, beginning in July 1998, all POPS organizations shall reapply to the USOE to reestablish their continuation and amount of funding. Re-application materials shall be provided by the USOE.

D. When there are changes in the program funding from the Utah State Legislature, allocations shall be at the discretion of the Board.

E. Funds shall be distributed annually beginning in August.

R277-444-4. Criteria for Eligibility, Applications, and Funding for RFP Organizations.

A. Non-profit professional arts and science organizations that have existed for at least three years prior to application with a track record of proven fiscal responsibility, of demonstrated excellence in their discipline, and with the ability to share their discipline creatively and effectively in educational settings shall be eligible to apply for RFP funding.

B. Documentation of an organization's non-profit status, professional excellence or educational soundness may be required by the USOE prior to receipt of application from these organizations.

C. RFP organizations that can demonstrate successful participation in the RFP Program for three years, have an education staff, and the capacity to reach out statewide may apply to the Board to become a POPS organization.

D. Organizations funded through an RFP process shall submit annual applications to the USOE. Applications shall be provided by the USOE.

E. The designated USOE specialist(s) shall make final funding recommendations following a review of applications by designated community representatives to the Board by August 31 of the school year in which the money is available.

F. Application for eligible organizations to become a POPS organization is possible every year through the following process:

(1) Organizations submit a letter of intent and a master plan for servicing the schools to the designated USOE specialist(s) by the first day of October to determine eligibility

and accordingly respond with an invitation to meet and complete the application and evaluation process required of all established POPS and arts and science subsidy organizations in their re-application procedure every four years.

(2) The completed application, original letter of intent, and recommendations based on the evaluation are submitted to the Board through the designated USOE specialist(s) by June 1.

(3) The Board or designee meets with the designated USOE specialist(s) to determine whether or not to approve the applicant as a candidate to become a POPS organization.

(4) The Board shall request new money for a new POPS organization from the Utah State Legislature if the application is approved, prior to providing funds to the newly approved organization.

(5) The same procedure would be followed for organizations desiring to apply to be arts and science subsidy organizations, and to re-apply to establish their funding level and standing as an arts and science subsidy group.

(6) Arts and science organizations meeting the arts and science subsidy criteria may apply for the arts and science subsidy program, but may not apply for RFP funding.

G. When there are changes in the program funding from the Utah State Legislature, allocations shall be at the discretion of the Board.

H. Funds shall be distributed annually beginning in August.

R277-444-5. Process for Continued Funding of Arts and Science Subsidy Program Organizations.

A. Scientists, artists, or entities hired or sponsored for services in the schools, directly or indirectly through coordinating organizations, shall be subject to the same review and approval for funding process.

B. Every four years, beginning in 2010, all arts and science subsidy program organizations shall reapply to the USOE to reestablish the continuation and amount of funding. Re-application materials shall be provided by the USOE.

C. When there are changes in the program funding from the Utah State Legislature, annual allocations shall be at the discretion of the Board.

D. Funds shall be distributed annually beginning in August.

R277-444-6. Criteria for Evaluation and Accountability of Funding.

A. Arts and science organizations qualifying for POPS or RFP funding may not charge schools for services funded under those programs.

B. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

C. Organizations that receive arts and science funding shall submit annual evaluation reports to the USOE by July 1.

D. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE, including a report and accounting of fees charged, if any, to recipient schools, districts, or organizations; and

(2) record of the dates and places of all services rendered, the number of instruction and performance hours per district, school, and classroom service, as applicable, with the number of students and teachers served, including:

(a) documentation that all school districts and schools have been offered opportunities for participation with all organizations over a three year period consistent with the arts and science organizations' plans and to the extent possible; and

(b) documentation of collaboration with the USOE and school communities in planning visit preparation/follow up and content that focuses on the state Core curriculum; and

(c) arts or science and their contribution(s) to students' development of life skills; and

(3) a brief description of services provided by the organizations through the fine arts and science POPS, RFP, or arts and science subsidy programs, and if requested, copies of any and all materials developed; and

(4) a summary of organization's evaluation of:

(a) cost-effectiveness;

(b) procedural efficiency;

(c) collaborative practices;

(d) educational soundness;

(e) professional excellence; and

(f) the resultant goals, plans, or both, for continued evaluation and improvement.

E. The USOE may require additional evaluation or audit procedures from organizations to demonstrate use of funds consistent with the law and this rule.

F. Funding and levels of funding to POPS, RFP, and arts and science subsidy programs are continued at the discretion of the Board based on review of information collected in year-end reports.

R277-444-7. Variations or Waivers.

A. No deviations from the approved and funded arts or science proposals shall be permitted without prior approval from the designated USOE specialist(s) or designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula

July 18, 2005

Notice of Continuation September 24, 2010

Art X Sec 3

53A-1-401(3)

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 content in text or digital format which may be used within the state curriculum framework for courses of study by students in public schools, including textbooks, workbooks, computer software, online or internet courses, CDs or DVDs, and multiple forms of communication media. Such materials may be used by students or teachers or both as principal sources of study to 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;

(3) shall include all textbooks, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and

(4) 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. "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

K. "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.

L. "National Instructional Materials Access Center (NIMAC)" is a central national repository established at the American Printing House for the Blind (APH) to store and to

maintain NIMAS file sets. It features an automated system for allowing publishers to deposit NIMAS-conformant files within the repository. Files are checked to confirm that they are valid NIMAS-conformant files and then cataloged in a web-based database. Those who have been authorized for access have user identifications and passwords. These authorized users may search the NIMAC database and directly download the file(s) they need to convert into accessible instructional materials for those students who are in elementary and secondary schools and have qualifying disabilities.

M. "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.

N. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

O. "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.

P. "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.

Q. "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.

R. "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.

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

T. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 3-11);

(b) mathematics (grades 3-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(2) an online direct writing assessment in grades 5 and 8;

(3) a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and

(4) the use of student behavior indicators in assessing student performance.

(5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.

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 Section 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 any primary supplemental or supportive instructional materials that support Core or U-PASS requirements.

(2) 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 Section 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.

D. Charter schools are exempt from Section 53A-14-107. Despite this exemption and consistent 34 CFR 300.172(c) (2007 edition), hereby incorporated by reference, all public schools subject to a state education agency that contracts with NIMAC require publishers with whom the public schools under the control of the state education agency contract to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instruction materials using the NIMAS or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

E. Notice to publishers

(1) All traditional and charter public schools shall be responsible for notifying all publishers with whom they contract for instructional materials beginning October 1, 2008 that all materials shall be provided consistent with R277-469-3D.

(2) Traditional and charter schools shall include a copy of R277-469, drawing publishers' attention to this provision of the rule, with the notice to publishers from whom the schools purchase materials.

(3) Schools shall provide publishers with timely notice of this requirement.

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 of the Commission shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission. Members may apply 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 after the 2012-2013 school year;

(2) are appropriate for use by students as principal sources of study;

(3) provide comprehensive coverage of course content; and

(4) 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 and state adopted assessments as applicable for the 2012-2013 school year;

(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 for the 2012-2013 school year.

R277-469-9. Qualifications for Core Curriculum Alignment Independent Parties.

Independent parties required to meet mapping and alignment requirements for the 2012-2013 school year 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 required to meet mapping and alignment requirements for the 2012-2013 school year 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 R277-469-10D(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 R277-464-10D(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. Beginning with the 2012-2013 school year, 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 after the 2012-2013 school year.

(2) 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 9, 2010

Notice of Continuation March 3, 2008

Art X, Sec 3

53A-14-101

53A-14-107

53A-1-401(3)

R277. Education, Administration.**R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.****R277-472-1. Definitions.**

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

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Section 53A-1a-506.5(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-472-3, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra 1, Earth Systems.

R277-472-2. 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 Board, Section 53A-1a-506.5(2) which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

R277-472-3. Class Size Calculations.

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. This calculation shall be derived from the total number of students in a given grade divided by the number of full time licensed teachers assigned to that grade.

(1) Students assigned to multiple grade level classes (and their respectively assigned teachers) shall not be counted in determining average class size for a grade level.

(2) Elementary classes that group students in programs other than by grade level, such as gifted and talented or English Language Learner programs, shall be calculated as a class if students participate for the entire instructional day.

(a) If students participate in special programs for part of the school day, they must be counted as part of their age-appropriate grade level (together with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), an average class size for special programs must be determined-consistent with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) Self-contained special education students and teachers shall not be included in this calculation.

(2) All other special education students and teachers shall be included.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) Self-contained special education students and teachers shall not be included in this calculation.

(2) All special education students, other than full-time self-contained students, shall be included in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) The calculation shall be determined by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) All calculations shall be made using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, the average class size may be calculated for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-4. School District School Capacity Information.

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

(1) Elementary schools within the school district that are below capacity and available for transfer students;

(2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;

(3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

(4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.

A. Each charter school shall post on its website information and procedures required under Section 53A-1a-506.5(2).

B. Each charter school shall develop and post admissions procedures for the charter school including:

- (1) Lottery dates and procedures;
- (2) Admission forms;
- (3) School calendar;
- (4) Non-discrimination assurances;
- (5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;
- (6) A readily accessible transfer form; and
- (7) Assurance and parent signature that student has been admitted to only one public school.

R277-472-6. Enrollment of Transferring Charter School Students in District Schools.

A. A school district shall enroll a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

B. A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

C. Students who are transferring from a charter school to a district school after June 30 for the upcoming school year are limited to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. A change in location for a student with disabilities may not result in a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Section 53A-11-904(3), students may be denied enrollment in a public school if they have been expelled from a public school.

G. Students may be denied enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Section 53A-1a-506.5(4).

**KEY: charter schools, students, transfers
August 9, 2010**

**Art X, Sec 3
53A-1a-506.5(2)
53A-1-401(3)**

R277. Education, Administration.**R277-602. Special Needs Scholarships - Funding and Procedures.****R277-602-1. Definitions.**

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP) from the school district where the school is

geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director; and

(3) a Board-designated special education advocate.

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

P. "Warrant" means payment by check to a private school.

R277-602-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, 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 outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online at www.usoe.org, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on

the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall provide documentation of student's enrollment in an eligible private school as defined under Section 53A-1a-705;

(4) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions

(1) The parent of a special needs scholarship student whose application is received on or before July 1 shall be eligible for quarterly scholarship payments equal to no more than the amount established in Section 53A-1a-706(2), with payments beginning on September 1.

(2) The parent of a special needs scholarship student whose application is received after July 1, but on or before September 1 that shall be eligible for quarterly scholarship payments equal to no more than three-fourths of the amount established in Section 53A-1a-706(2), with payments beginning on November 1.

(3) The parent of a special needs scholarship student whose application is received after September 1, but on or before November 1 shall be eligible for quarterly scholarship payments equal to no more than one-half of the amount established in Section 53A-1a-706(2), with payments beginning on February 1.

(4) The parent of a special needs scholarship student whose application is received on or before February 15 shall be eligible for quarterly scholarship payments equal to no more than one-fourth of the amount established in Section 53A-1a-706(2), with payments beginning on April 15.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by July 1 in the second and third year to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School district and charter school notification to students with IEPs:

(1) School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program.

(2) The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(3) The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

(4) The written notice shall be provided annually no later than February 1 to all students who have IEPs.

(5) The written notice shall include the address of the Internet website maintained by the Board, <http://www.schools.utah.gov/admin/specialneeds.htm>, that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

(6) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Internet website maintained by the Board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program on the school district's or school's website, if the school district or school has one.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than May 30 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than July 30 of each year.

E. The Board shall mail scholarships directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. Beginning with the 2006-07 school year, the Board may begin scholarship payments to eligible private schools no earlier than July 1 but before payment dates established by Section 53A-1a-706(5)(a) if the parent/guardian negotiates a payment date with the USOE, provides reasonable advance notice to the USOE and assumes responsibility for transmission of the payment from the USOE to the private school.

G. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

H. The Board shall verify and cross-check with school districts or charter school special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by May 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

H. An approved eligible private school that changes ownership shall submit a new application for eligibility to receive Carson Smith scholarship payments from the Board; the application shall demonstrate that the school continues to meet the eligibility requirements of R277-602-6.

(1) The application for renewed eligibility shall be received from the school within 60 calendar days of the change of ownership.

(2) Ownership changes on the date that an agreement is signed between previous owner and new owner.

(3) If the application is not received by the USOE within the 60 days, the new owner/school is presumed ineligible to receive continued Carson Smith scholarship payments from the USOE and, at the discretion of the Board, the USOE may reclaim any payments made to a school within the previous 60 days.

(4) If the application is not received by the USOE within 60 days after the change of ownership, the school is not an eligible school and shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of R277-602.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal any final administrative decision under this rule.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to a written appeal.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602-8 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

June 23, 2009

Notice of Continuation September 24, 2010

Art X Sec 3

53A-1a-706(5)(b)

53A-3-410(6)(i)(c)

53A-1a-707

53A-1-401(3)

R309. Environmental Quality, Drinking Water.**R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.****R309-215-1. Purpose.**

The purpose of this rule is to outline the monitoring and reporting requirements for public water systems which treat water prior to providing it for human consumption.

R309-215-2 Authority.

R309-215-3 Definitions.

R309-215-4 General.

R309-215-5 Monitoring Requirements for Groundwater Disinfection.

R309-215-6 Monitoring Requirements for Miscellaneous Treatment Plants.

R309-215-7 Surface Water Treatment Plant Evaluations.

R309-215-8 Surface Water Treatment Plant Monitoring and Reporting.

R309-215-9 Turbidity Monitoring and Reporting.

R309-215-10 Residual Disinfectant Monitoring.

R309-215-11 Waterborne Disease Outbreak.

R309-215-12 Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).

R309-215-13 Treatment Techniques for control of Disinfection Byproducts Precursors (DBPP).

R309-215-14 Disinfection Profiling and Benchmarking.

R309-215-15 Enhanced Treatment for Cryptosporidium (Federal Subpart W).

R309-215-16 Groundwater Rule.

R309-215-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-215-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-215-4. General.

(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures shall be carried out, as outlined in R309-220. Water suppliers shall also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at representative sites as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples shall be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of

Drinking Water either electronically or in hard copy form.

(9) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register

(10) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

R309-215-5. Monitoring Requirements for Groundwater Disinfection.

(1) General: Continuous disinfection is recommended for all drinking water sources. Continuous disinfection shall be required of all groundwater sources which do not consistently meet standards of bacteriologic quality. Once required by the Executive Secretary continuous disinfection shall not be interrupted nor terminated unless so authorized, in writing, by the Executive Secretary.

(2) Disinfection Reporting: For each disinfection treatment facility, plant management shall report information to the Division as specified in R309-105-16(2)(c).

(3) A water system shall report a malfunction of any facility or equipment such that a detectable residual cannot be maintained throughout the distribution system. The system shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/L within four hours.

R309-215-6. Monitoring Requirements for Miscellaneous Treatment Plants.

(1) Treatment of the drinking water may be required for other than inactivation of microbial contaminants or removal/inactivation of pathogens and viruses. Miscellaneous treatment methods are outlined in R309-535.

(2) The Executive Secretary may require additional monitoring as necessary to evaluate the treatment process and to ensure the quality of the water. The specific analytes, frequency of monitoring, the reporting frequency and the sampling location for which monitoring may be required shall be determined by the following:

(a) the contaminant of concern for which the treatment process has been installed;

(b) the process control samples required to operate treatment process being used; and

(c) alternative surrogate sampling when it is either quicker or less expensive and still provides the necessary information;

(3) For point-of-use or point-of-entry technology the location of sampling may be at each treatment unit spread out over time.

(4) If monitoring is required, the Executive Secretary shall provide the report forms and the water system shall report the data as required by R309-105-16(3). Alternate forms may be used as long as prior approval from the Executive Secretary is obtained.

R309-215-7. Surface Water Treatment Evaluations.

(1) General: Surface water sources or groundwater sources under direct influence of surface water shall be disinfected during the course of required surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor the plant's operation and report the results to the Division as indicated in R309-215-7 through R309-215-14. Individual plants will be evaluated in accordance with the criteria outlined in paragraph (2) below. Based on information submitted and/or plant inspections, the plant will receive credit for treatment

techniques other than disinfection that remove pathogens, specifically Giardia lamblia and viruses. This credit (log removal) will reduce the required disinfectant "CT" value which the plant shall maintain to assure compliance with R309-200-5(7)(a)(i).

(2) Criteria for Individual Treatment Plant Evaluation: New and existing water treatment plants shall meet specified monitoring and performance criteria in order to ensure that filtration and disinfection are satisfactorily practiced. The monitoring requirements and performance criteria for turbidity and disinfection listed above provide the minimum for the Division to evaluate the plant's efficiency in removing and/or inactivating 99.9 percent (3-log) of Giardia lamblia cysts and 99.99 percent (4-log) of viruses as required by R309-505-6(2)(a) and (b).

(3) The Division, upon evaluation of individual raw water sources, surface water or ground water under the direct influence of surface water, may require greater than the 3-log, 4-log removal/inactivation of Giardia and viruses respectively. If a raw water source exhibits an estimated concentration of 1 to 10 Giardia cysts per 100 liters, 4 and 5-log removal/inactivation may be required. If the raw water exhibits a concentration of 10 to 100 cysts per 100 liters, 5 and 6-log removal/inactivation may be required.

If a plant decides to recycle any spent filter backwash water, thickener supernatant, or liquids from dewatering processes the Division shall be notified in writing by December 8, 2003 or prior to recycling such waters. Such notification shall include, at a minimum:

(a) A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and any liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(b) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and Division approved operating capacity for the plant where the Division has made such determinations.

(c) Treatment technique (TT) requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system as defined in R309-525 or R309-530 or at an alternate location approved by the Division by or after June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

(4) The Division, upon individual plant evaluation, may assign the treatment techniques (coagulation, flocculation, sedimentation and filtration) credit toward removal of Giardia cysts and viruses. The greater the number of barriers in the treatment process, the greater the reduction of pathogens, therefore lessor credit will be given to processes such as direct filtration which eliminate one or more conventional barriers. Plants may monitor turbidity at multiple points in the treatment process as evidence of the performance of an individual treatment technique.

(5) The nominal credit that will be assigned certain conventional processes are outlined in Table 215-1:

TABLE 215-1
CONVENTIONAL PROCESS CREDIT

Process	Log Reduction Credit	
	Giardia	Viruses
Conventional Complete Treatment	2.5	2.0
Direct Filtration	2.0	1.0

Slow Sand Filtration	2.0	2.0
Diatomaceous Earth Filters	2.0	1.0

(6) Upon evaluation of information provided by individual plants or obtained during inspections by Division staff, the Division may increase or decrease the nominal credit assigned individual plants based on that evaluation.

(a) Items which would augment the treatment process and thereby warrant increased credit are:

(i) facilities or means to moderate extreme fluctuations in raw water characteristics;

(ii) sufficient on-site laboratory facilities regularly used to alert operators to changes in raw water quality;

(iii) use of pilot stream facilities which duplicate treatment conditions but allow operators to know results of adjustments much sooner than if only monitoring plant effluent;

(iv) use of additional monitoring methods such as particle size and distribution analysis to achieve greater efficiency in particulate removal;

(v) regular program for preventive maintenance, records of such, and general good housekeeping; or

(vi) adequate staff of well trained and certified plant operators.

(b) Items which would be considered a detriment to the treatment process and thereby warrant decreased credit are:

(i) inadequate staff of trained and certified operators;

(ii) lack of regular maintenance and poor housekeeping;

or
(iii) insufficient on-site laboratory facilities.

R309-215-8. Surface Water Treatment Plant Monitoring and Reporting.

Treatment plant management shall report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(1) For each day;
(a) if the plant treats water from multiple sources, the sources being utilized (including recycled backwash water) and the ratio for each if blending occurs.

(b) the total volume of water treated by the plant,
(c) the turbidity of the raw water entering the plant,
(d) the pH of the effluent water, measured at or near the monitoring point for disinfectant residual,

(e) the temperature of the effluent water, measured at or near the monitoring point for disinfectant residual,
(f) the type and amount of chemicals used in the treatment process (clearly indicating the weight and active percent of chemical if dry feeders are used, or the percent solution and volume fed if liquid feeders are used),

(g) the high and low temperature and weather conditions (local forecast information may be used, but any precipitation in the watershed should be further described as light, moderate, heavy, or extremely heavy), and

(h) the results of any "jar tests" conducted that day
(2) For each filter, each day;

(a) the rate of water applied to each (gpm/sq.ft.),
(b) the head loss across each (feet of water or psi),
(c) length of backwash (if conducted; in minutes), and
(d) hours of operation since last backwashed.

(3) Annually; certify in writing as required by R309-105-14(1) that when a product containing acrylamide and/or epichlorohydrin is used, the combination of the amount of residual monomer in the polymer and the dosage rate does not exceed the levels specified as follows:

(a) Acrylamide: 0.05%, when dosed at 1 part per million, and
(b) Epichlorohydrin: 0.01%, when dosed at 20 parts per million.

Certification may rely on manufacturers data.
(4) Additional record-keeping for plants that recycle.

The system must collect and retain on file recycle flow information for review and evaluation by the Division beginning June 8, 2004 or upon approval for recycling. As a minimum the following shall be maintained:

- (a) Copy of the recycle notification and information submitted to the Division under R309-215-7(3).
- (b) List of all recycle flows and the frequency with which they are returned.
- (c) Average and maximum backwash flow rates through the filters and the average and maximum duration of the filter backwash process in minutes.
- (d) Typical filter run length and a written summary of how filter run length is determined.
- (e) The type of treatment provided for the recycle flow.
- (f) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used, average dose, frequency of use and frequency at which solids are removed, if applicable.

R309-215-9. Turbidity Monitoring and Reporting.

Public water systems utilizing surface water and ground water under the direct influence of surface water shall monitor for turbidity in accordance with this section. Small surface water systems serving a population less than 10,000 shall monitor in accordance with subsections (1), (2), (3), (5) and (6). Large surface water systems serving 10,000 or more population shall monitor in accordance with subsections (1), (2), (3), (4) and (6).

(1) Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

(a) All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor for turbidity at the treatment plant's clearwell outlet. This monitoring shall be independent of the individual filter monitoring required by R309-525-15(4)(b)(vi) and R309-525-15(4)(c)(vii). Where the plant facility does not have an internal clearwell, the turbidity shall be monitored at the inlet to a finished water reservoir external to the plant provided such reservoir receives only water from the treatment plant and, furthermore, is located before any point of consumer connection to the water system. If such external reservoir does not exist, turbidity shall then be monitored at a location immediately downstream of the treatment plant filters.

(b) All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section (c) below, shall be equipped with continuous turbidity monitoring and recording equipment for which the direct responsible charge operator will validate the continuous measurements for accuracy in accordance with paragraph (d) below. These plants shall continuously record the finished water turbidity of the combined filter effluent as well as each individual filter. All systems shall be equipped to continuously monitor the turbidity at each filter unless the treatment plant is only equipped with two filters and the turbidity is measured at the combined filter effluent (CFE). If there is a failure in continuous monitoring equipment the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Systems serving less than 10,000 population shall have no more than 14 days to conduct grab samples in lieu of continuous monitoring in order to correct any failing equipment. All surface water systems shall monitor the turbidity results of individual filters at a frequency no greater than every 15 minutes.

(c) Turbidity measurements, as outlined below, shall be reported to the Division within ten days after the end of each

month that the system serves water to the public. Systems are required to mark and interpret turbidity values from the recorded charts at the end of each four-hour interval of operation (or some shorter regular time interval) to determine compliance with the turbidity performance criterion. For systems using slow sand filtration the Executive Secretary may reduce the sampling frequency to as little as once per day if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the Executive Secretary may reduce the turbidity sampling frequency to as little as once per day, regardless of the type of filtration treatment used, if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance.

The following shall be reported and the required percentage achieved for compliance:

(i) The total number of interpreted filtered water turbidity measurements taken during the month;

(ii) The number and percentage of interpreted filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in R309-200-5(5)(a)(ii) (or increased limit approved by the Executive Secretary). The percentage of measurements which are less than or equal to the turbidity limit shall be 95 percent or greater for compliance; and

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU. The system shall inform the Division as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with R309-220-6(2)(c) if any turbidity measurements exceed 5 NTU.

(d) The analytical method which shall be followed in making the required determinations shall be Nephelometric Method - Nephelometric Turbidity Unit as set forth in the latest edition of Standard Methods for Examination of Water and Wastewater, 1985, American Public Health Association et al., (Method 214A, pp. 134-136 in the 16th edition). Continuous turbidity monitoring equipment shall be checked for accuracy and recalibrated using methods outlined in the above standard at a minimum frequency of monthly. The direct responsible charge operator will note on the turbidity report form when these recalibrations are conducted. For systems that practice lime softening, the representative combined filter effluent turbidity sample may be acidified prior to analysis with prior approval by the Executive Secretary as to the protocol.

(2) Procedures if a Filtered Water Turbidity Limit is Exceeded

(a) Resampling -

If an analysis indicates that the turbidity limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour.

(b) If the result of resampling confirms that the turbidity limit has been exceeded, the system shall collect and have analyzed at least one bacteriologic sample near the first service connection from the source as specified in R309-210-5(1)(f). The system shall collect this bacteriologic sample within 24 hours of the turbidity exceedance. Sample results from this monitoring shall be included in determining bacteriologic compliance for that month.

(c) Initial Notification of the Executive Secretary -

If the repeat sample confirms that the turbidity limit has been exceeded, the supplier shall report this fact to the Executive Secretary as soon as practical, but no later than 24 hours after the exceedance is known in accordance with the public notification requirements under R309-220-6(2)(c). This reporting is in addition to reporting the incident on any monthly reports.

(3) For the purpose of individual plant evaluation and establishment of pathogen removal credit for the purpose of

lowering the required "CT" value assigned a plant, plant management may do additional turbidity monitoring at other points to satisfy criteria in R309-215-7(2).

(4) Additional reporting and recordkeeping requirements for large surface water systems (serving greater than 10,000 population) reporting and recordkeeping requirements.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a large surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(ii) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system shall report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(iii) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment shall consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(iv) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall arrange for and conduct a comprehensive performance evaluation by the Division or a third party approved by the Executive Secretary no later than 30 days following the exceedance and have the evaluation completed and submitted to the Division no later than 90 days following the exceedance.

(5) Additional reporting and recordkeeping requirements for surface water systems serving less than 10,000 population.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter (or CFE for systems with 2

filters that monitor CFE in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number(s), the corresponding date(s), the turbidity values which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s), to the Executive Secretary by the 10th of the following month.

(ii) If a system was required to report to the Executive Secretary for three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall conduct a self-assessment of the filter within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (iii) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.

(iii) If a system was required to report to the Executive Secretary for two months in a row and turbidity exceeded 2.0 NTU in two consecutive measurements taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall arrange to have a comprehensive performance evaluation (CPE) conducted by the Division or a third party approved by the Executive Secretary no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE is required, the system must report a CPE required and the date it was triggered. If a CPE has been completed by the Division or a third party approved by the Executive Secretary within the 12 prior months or the system and Division are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the Division no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

(6) Additional reporting requirements.

(a) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

(b) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9 for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

R309-215-10. Residual Disinfectant.

Treatment plant management shall continuously monitor disinfectant residuals and report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(1) For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take

grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies listed in Table 215.2 below:

TABLE 215-2
RESIDUAL GRAB SAMPLE FREQUENCY

System size by population	Samples/day
Less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

Note: The day's samples cannot be taken at the same time. The sampling intervals are subject to Executive Secretary's review and approval.

(2) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/L and when the Division was notified of the occurrence. The system shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/L within four hours.

(3) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to R309-210-5:

(a) number of instances where the residual disinfectant concentration is measured;

(b) number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(c) number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(d) number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

(e) number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml;

(f) for the current and previous month the system serves water to the public, the value of "V" in the formula, $V = ((c+d+e)/(a+b)) \times 100$, where a = the value in sub-section (a) above, b = the value in sub-section (b) above, c = the value in sub-section (c) above, d = the value in sub-section (d) above, and e = the value in sub-section (e) above.

R309-215-11. Waterborne Disease Outbreak.

Each public water system, upon discovering that a waterborne disease outbreak as defined in R309-110 potentially attributable to their water system has occurred, shall report that occurrence to the Division as soon as possible, but no later than by the end of the next business day.

R309-215-12. Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).

(1) Routine monitoring. Surface water systems which use conventional filtration treatment (as defined in R309-110) shall monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this paragraph (1) shall also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems shall monitor for alkalinity in the source water prior to any treatment. Systems shall take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Reduced monitoring. Surface water systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may

reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) Compliance shall be determined as specified by R309-215-13(3). Systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in R309-215-13(2)(b) and shall therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to R309-215-13(2)(c) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under R309-215-13(3)(a)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

R309-215-13. Treatment Technique for Control of Disinfection Byproduct Precursors (DBPP).

(1) Applicability.

(a) Surface water systems using conventional filtration treatment (as defined in R309-110) shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph (2) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (1)(b) or (1)(c) of this section.

(b) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Surface Water Systems using conventional filtration treatment may use the alternative compliance criteria in paragraphs (1)(b)(i) through (vi) of this section to comply with this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-215-12.

(i) The system's source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average

(iii) The system's source water TOC level, measured according to R309-200-4(3), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to R309-200-4(3), is greater than 60 mg/L (as CaCO₃), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in R309-210-8(1)(a), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in R309-210-8(1)(a) to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Executive Secretary for approval not later than the effective date for compliance in R309-210-8(1)(a). These technologies shall be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation

of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(c) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (2)(b) of this section may use the alternative compliance criteria in paragraphs (1)(c)(i) and (ii) of this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-210-8(4).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as CaCO₃), measured monthly according to R309-200-4(3) and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as CaCO₃), measured monthly according to R309-200-4(3) and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(a) Systems shall achieve the percent reduction of TOC specified in paragraph (2)(b) of this section between the source water and the combined filter effluent, unless the Executive Secretary approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section.

(b) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with R309-200-4(3). Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC:

TABLE 215-3

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Surface Water Systems Using Conventional Treatment (notes 1,2)

Source-Water TOC, mg/L	Source-Water Alkalinity, mg/L as CaCO ₃		
	0-60 (percent)	>60-120 (percent)	>120 (Note 3) (percent)
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

Note 1: Systems meeting at least one of the conditions in paragraph (1)(b)(i)-(vi) of this section are not required to operate with enhanced coagulation.

Note 2: Softening systems meeting one of the alternative compliance criteria in paragraph (1)(c) of this section are not required to operate with enhanced softening.

Note 3: Systems practicing softening shall meet the TOC removal requirements in this column.

(c) Surface water systems using conventional treatment systems that cannot achieve the Step 1 TOC removals required by paragraph (2)(b) of this section due to water quality parameters or operational constraints shall apply to the Executive Secretary, within three months of failure to achieve the TOC removals required by paragraph (2)(b) of this section, for approval of alternative minimum TOC removal (Step 2) requirements submitted by the system. If the Executive Secretary approves the alternative minimum TOC removal (Step

2) requirements, the Executive Secretary may make those requirements retroactive for the purposes of determining compliance. Until the Executive Secretary approves the alternate minimum TOC removal (Step 2) requirements, the system shall meet the Step 1 TOC removals contained in paragraph (2)(b) of this section.

(d) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Executive Secretary by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section shall include, at a minimum, results of bench- or pilot-scale testing conducted under paragraph (2)(d)(i) of this section. The submitted bench- or pilot- scale testing shall be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as: Coagulation at a coagulant dose and pH as determined by the method described in paragraphs (2)(d)(i) through (v) of this section such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Executive Secretary, this minimum requirement supersedes the minimum TOC removal required by the table in paragraph (2)(b) of this section. This requirement will be effective until such time as the Executive Secretary approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve Executive Secretary set alternative minimum TOC removal levels is a violation of R309-215-13.

(ii) Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table 215-4:

ALKALINITY (mg/L as CaCO ₃)	TARGET pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary (consistent with other NPDWRs) to achieve the minimum TOC percent removal approved under paragraph (2)(c) of this section.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the Executive Secretary for a waiver of enhanced coagulation requirements.

(3) Compliance Calculations.

(a) Surface Water Systems other than those identified in paragraphs (1)(b) or (1)(c) of this section shall comply with requirements contained in paragraphs (2)(b) or (2)(c) of this section. Systems shall calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal

to: $(1 - (\text{treated water TOC}/\text{source water TOC})) \times 100$.

(ii) Determine the required monthly TOC percent removal (from either the table in paragraph (2)(b) of this section or from paragraph (2)(c) of this section).

(iii) Divide the value in paragraph (3)(a)(i) of this section by the value in paragraph (3)(a)(ii) of this section.

(iv) Add together the results of paragraph (3)(a)(iii) of this section for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (3)(a)(iv) of this section is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) Systems may use the provisions in paragraphs (3)(b)(i) through (v) of this section in lieu of the calculations in paragraph (3)(a)(i) through (v) of this section to determine compliance with TOC percent removal requirements.

(i) In any month that the system's treated or source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as CaCO₃), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iii) In any month that the system's source water SUVA, prior to any treatment and measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iv) In any month that the system's finished water SUVA, measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as CaCO₃), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(c) Surface Water Systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (1)(b) or (c) of this section.

(4) Treatment Technique Requirements for DBP Precursors. The Executive Secretary identifies the following as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems: For Surface Water Systems using conventional treatment, enhanced coagulation or enhanced softening.

R309-215-14. Disinfection Profiling and Benchmarking.

A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. Community or non-transient non-community water systems which use surface water or ground water under the direct influence of surface must develop a disinfection profile unless the Executive Secretary determines that a system's profile is unnecessary. The Executive Secretary may approve the use of a more representative data set for disinfection profiling than the data set required under R309-215-14.

(1) Determination of systems required to profile. A public

water system subject to the requirements of this subpart shall determine its TTHM annual average using the procedure in paragraph (1)(a) of this section and its HAA5 annual average using the procedure in paragraph (1)(b) of this section. The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring.

(a) The TTHM annual average shall be the annual average during the same period as is used for the HAA5 annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that use grandfathered HAA5 occurrence data that meet the provisions of paragraph (1)(b)(ii) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(iii) Those systems that use HAA5 occurrence data that meet the provisions of paragraph (1)(b)(iii)(A) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(b) The HAA5 annual average shall be the annual average during the same period as is used for the TTHM annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that have collected four quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) may use those data to determine whether the requirements of this section apply.

(iii) Those systems that have not collected four quarters of HAA5 occurrence data that meets the provisions of either paragraph (1)(b)(i) or (ii) of this section by March 16, 1999 shall either:

(A) Conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) to determine the HAA5 annual average and whether the requirements of paragraph (2) of this section apply. This monitoring shall be completed so that the applicability determination can be made no later than March 31, 2000, or

(B) Comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with paragraph (2) of this section.

(c) The system may request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(d) The Executive Secretary may require that a system use a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(e) The system shall submit data to the Executive Secretary on the schedule in paragraphs (1)(e)(i) through (v) of this section.

(i) Those systems that collected TTHM and HAA5 data under the provisions of subpart M (Information Collection Rule), as required by paragraphs (1)(a)(i) and (1)(b)(i) of this section, shall submit the results of the samples collected during the last 12 months of required monitoring under 40 CFR section 141.142 (Information Collection Rule) not later than December 31, 1999.

(ii) Those systems that have collected four consecutive quarters of HAA5 occurrence data that meets the routine

monitoring sample number and location for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3), as allowed by paragraphs (1)(a)(ii) and (1)(b)(ii) of this section, shall submit those data to the Executive Secretary not later April 16, 1999. Until the Executive Secretary has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under paragraph (1)(b)(iii) of this section.

(iii) Those systems that conduct monitoring for HAA5 using the monitoring requirements specified by paragraphs (1)(a)(iii) and (1)(b)(iii)(A) of this section, shall submit TTHM and HAA5 data not later than April 1, 2000.

(iv) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under paragraphs (1)(b)(iii)(B) of this section, shall notify the Executive Secretary in writing of their election not later than December 31, 1999.

(v) If the system elects to request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(b)(i) of this section, the system shall submit this request in writing not later than December 31, 1999.

(f) Any system having either a TTHM annual average greater than or equal to 0.064 mg/L or an HAA5 annual average greater than or equal to 0.048 mg/L during the period identified in paragraphs (1)(a) and (b) of this section shall comply with paragraph (2) of this section.

(g) The Executive Secretary may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system. The Executive Secretary may approve a more representative TTHM and HAA5 data set to determine these levels.

(2) Disinfection profiling.

(a) Any system that is required by paragraph (1) of this section shall develop a disinfection profile of its disinfection practice for a period of up to three years. A disinfection profile consists of the following 3 steps:

(i) The system must collect data for several parameters from the plant over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004. If your system serves 10,000 persons or greater than the requirements of R309-215-14(2) are only required if it meets the criteria in paragraph R309-215-14(1)(f).

(ii) The system must use this data to calculate weekly log inactivation as discussed in paragraph (d) of this section.

(iii) The system must use these weekly log inactivations to develop a disinfection profile.

(b) The system shall monitor daily for a period of 12 consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the CT99.9 values in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division), as appropriate, through the entire treatment plant. This system shall begin this monitoring not later than April 1, 2000. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section. A system with more than one point of disinfectant application shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section for each disinfection segment. The system shall monitor the parameters

necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3), as follows:

(i) The temperature of the disinfected water shall be measured once per day at each residual disinfectant concentration sampling point during peak hourly flow.

(ii) If the system uses chlorine, the pH of the disinfected water shall be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(iii) The disinfectant contact time(s) ("T") shall be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(v) For systems serving less than 10,000 persons, the above parameters shall be monitored once per week on the same calendar day, over 12 consecutive months for the purposes of disinfection profiling.

(c) In lieu of the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(i) of this section. In addition to the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(ii) of this section.

(i) A PWS that has three years of existing operational data may submit those data, a profile generated using those data, and a request that the Executive Secretary approve use of those data in lieu of monitoring under the provisions of paragraph (2)(b) of this section not later than March 31, 2000. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of *Giardia lamblia* inactivation through the entire treatment plant and not just of certain treatment segments. Until the Executive Secretary approves this request, the system is required to conduct monitoring under the provisions of paragraph (2)(b) of this section.

(ii) In addition to the disinfection profile generated under paragraph (2)(b) of this section, a PWS that has existing operational data may use those data to develop a disinfection profile for additional years. Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph (3) of this section. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(d) The system shall calculate the total inactivation ratio as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (2)(d)(i)(A) or (2)(d)(i)(B) of this section.

(A) Determine one inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow.

(B) Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system shall calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine sum of ($CT_{calc}/CT_{99.9}$).

(ii) If the system uses more than one point of disinfectant application before the first customer, the system shall determine

the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CT_{calc}/CT_{99.9}$) value of each segment and sum of ($CT_{calc}/CT_{99.9}$) shall be calculated using the method in paragraph (b)(4)(i) of this section.

(iii) The system shall determine the total logs of inactivation by multiplying the value calculated in paragraph (2)(d)(i) or (ii) of this section by 3.0.

(e) A system that uses either chloramines and chlorine dioxide or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the Executive Secretary.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the Executive Secretary for review as part of sanitary surveys conducted by the Executive Secretary.

(3) Disinfection Benchmarking

(a) Any system required to develop a disinfection profile under the provisions of paragraphs (1) and (2) of this section and that decides to make a significant change to its disinfection practice shall consult with the Executive Secretary prior to making such change. Significant changes to disinfection practice are:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; and

(iv) Any other modification identified by the Executive Secretary.

(b) Any system that is modifying its disinfection practice shall calculate its disinfection benchmark using the procedure specified in paragraphs (3)(b)(i) through (ii) of this section.

(i) For each year of profiling data collected and calculated under paragraph (2) of this section, the system shall determine the lowest average monthly *Giardia lamblia* inactivation in each year of profiling data. The system shall determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily *Giardia lamblia* of inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of *Giardia lamblia* inactivation in each year of profiling data.

(c) A system that uses either chloramines, ozone or chlorine dioxide for primary disinfection must calculate the disinfection benchmark from the data the system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under paragraph (b)(i) above. This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in paragraph (b)(i).

(d) The system shall submit information in paragraphs (3)(d)(i) through (iv) of this section to the Executive Secretary as part of its consultation process.

(i) A description of the proposed change;

(ii) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) under paragraph (2) of this section and benchmark as required by paragraph (3)(b) of this section; and

(iii) An analysis of how the proposed change will affect the current levels of disinfection.

(iv) Any additional information requested by the Executive Secretary.

R309-215-15. Enhanced Treatment for *Cryptosporidium* (Federal Subpart W).

(1) General requirements.

(a) The rule requirements of this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for Cryptosporidium. These requirements are in addition to requirements for filtration and disinfection in R309-200 and other parts of R309-215.

(b) Applicability. The requirements of this subpart apply to all surface water systems, which are public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water.

(i) Wholesale systems, as defined in R309-110, must comply with the requirements of this section based on the population of the largest system in the combined distribution system.

(ii) The requirements of this sub-section apply to systems required by these rules to provide filtration treatment, whether or not the system is currently operating a filtration system.

(c) Requirements. Systems subject to this subpart must comply with the following requirements:

(i) Systems must conduct an initial and a second round of source water monitoring for each plant that treats a surface water or GWUDI source. This monitoring may include sampling for Cryptosporidium, E. coli, and turbidity as described in R309-215-15(2) through R309-215-15(7), to determine what level, if any, of additional Cryptosporidium treatment they must provide.

(ii) Systems that plan to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in R309-215-15(9) through R309-215-15(10).

(iii) Filtered systems must determine their Cryptosporidium treatment bin classification as described in R309-215-15(11) and provide additional treatment for Cryptosporidium, if required, as described in R309-215-15(12). Filtered must implement Cryptosporidium treatment according to the schedule in R309-215-14.

(iv) Systems required to provide additional treatment for Cryptosporidium must implement microbial toolbox options that are designed and operated as described in R309-215-15(15) through R309-215-15(20).

(v) Systems must comply with the applicable recordkeeping and reporting requirements described in R309-215-15(21) through R309-215-15(22).

(vi) Systems must address significant deficiencies identified in sanitary surveys performed by EPA as described in R309-215-15(22).

(2) Source Water Monitoring Requirements.

(a) Initial round of source water monitoring. Systems must conduct the following monitoring on the schedule in paragraph (c) of this section unless they meet the monitoring exemption criteria in paragraph (d) of this section.

(i) Filtered systems serving at least 10,000 people must sample their source water for Cryptosporidium, E. coli, and turbidity at least monthly for 24 months.

(ii) (A) Filtered systems serving fewer than 10,000 people must sample their source water for E. coli at least once every two weeks for 12 months.

(B) A filtered system serving fewer than 10,000 people may avoid E. coli monitoring if the system notifies the Executive Secretary that it will monitor for Cryptosporidium as described in paragraph (a)(iv) of this section. The system must notify the Executive Secretary no later than 3 months prior to the date the system is otherwise required to start E. coli monitoring under R309-215-15(2)(c).

(iii) Filtered systems serving fewer than 10,000 people must sample their source water for Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted under paragraph (a)(iii) of this section:

(A) For systems using lake/reservoir sources, the annual mean E. coli concentration is greater than 10 E. coli/ 100 mL.

(B) For systems using flowing stream sources, the annual mean E. coli concentration is greater than 50 E. coli/ 100 mL.

(C) The system does not conduct E. coli monitoring as described in paragraph (a)(iii) of this section.

(D) Systems using ground water under the direct influence of surface water (GWUDI) must comply with the requirements of paragraph (a)(iv) of this section based on the E. coli level that applies to the nearest surface water body. If no surface water body is nearby, the system must comply based on the requirements that apply to systems using lake/reservoir sources.

(iv) For filtered systems serving fewer than 10,000 people, the Executive Secretary may approve monitoring for an indicator other than E. coli under paragraph (a)(ii) of this section. The Executive Secretary also may approve an alternative to the E. coli concentration in paragraph (a)(iii)(A), (B) or (D) of this section to trigger Cryptosporidium monitoring. This approval by the Executive Secretary must be provided to the system in writing and must include the basis for the Executive Secretary's determination that the alternative indicator and/or trigger level will provide a more accurate identification of whether a system will exceed the Bin 1 Cryptosporidium level in R309-215-15(11).

(v) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(b) Second round of source water monitoring. Systems must conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (a) of this section, unless they meet the monitoring exemption criteria in paragraph (d) of this section. Systems must conduct this monitoring on the schedule in paragraph (c) of this section.

(c) Monitoring schedule. Systems must begin the monitoring required in paragraphs (a) and (b) of this section no later than the month beginning with the date listed:

(i) Systems that serve at least 100,000 people must:

(A) begin the first round of source water monitoring no later than October 1, 2006; and

(B) begin the second round of source water monitoring no later than April 1, 2015.

(ii) Systems that serve from 50,000 to 99,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2007; and

(B) begin the second round of source water monitoring no later than October 1, 2015.

(iii) Systems that serve from 10,000 to 49,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2016.

(iv) Systems that serve less than 10,000 people and monitor for E. coli must:

(A) begin the first round of source water monitoring no later than October 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2017.

(C) Applies only to filtered systems.

(v) Systems that serve less than 10,000 people and monitor for Cryptosporidium must:

(A) begin the first round of source water monitoring no later than April 1, 2010; and

(B) begin the second round of source water monitoring no later than April 1, 2019.

(C) Applies to filtered systems that meet the conditions of paragraph (a)(iii) of this section.

(d) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this sub-section if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in R309-215-15(12).

(ii) If a system chooses to provide the level of treatment in paragraph (d)(i) of this section rather than start source monitoring, the system must notify the Executive Secretary in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under R309-215-15(3). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the Executive Secretary in writing that it will provide this level of treatment. Systems must install and operate technologies to provide this level of treatment by the applicable compliance dates in R309-215-15(13).

(e) Plants operating only part of the year. Systems with surface water plants that operate for only part of the year must conduct source water monitoring in accordance with this subpart, but with the following modifications:

(i) Systems must sample their source water only during the months that the plant operates unless the Executive Secretary specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for *Cryptosporidium* must collect at least six *Cryptosporidium* samples per year during each of two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(f)(i) New sources. A system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring under paragraph (c) of this section must monitor the new source on a schedule the Executive Secretary approves. Source water monitoring must meet the requirements of this sub-section. The system must also meet the bin classification and *Cryptosporidium* treatment requirements of R309-215-15(11) and (12) for the new source on a schedule the Executive Secretary approves.

(ii) The requirements of R309-215-15(2)(f) apply to surface water systems that begin operation after the monitoring start date applicable to the system's size under paragraph (c) of this section.

(iii) The system must begin a second round of source water monitoring no later than 6 years following initial bin classification under R309-215-15(11).

(g) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of R309-215-15(3) through R309-215-15(7) is a monitoring violation.

(h) Grandfathering monitoring data. Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in paragraph (c) of this section to meet the initial source water monitoring requirements in paragraph (a) of this section. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in R309-215-15(8).

(3) Sampling schedules.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(i) Systems must submit sampling schedules no later than 3 months prior to the applicable date listed in R309-215-15(2)(c) for each round of required monitoring.

(ii) (A) Systems serving at least 10,000 people must submit their sampling schedule for the initial round of source water monitoring under R309-215-15(2)(a) to EPA

electronically at <https://intranet.epa.gov/lt2/>.

(B) If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that EPA approves.

(iii) Systems serving fewer than 10,000 people must submit their sampling schedules for the initial round of source water monitoring R309-215-15(2)(a) to the Executive Secretary.

(iv) Systems must submit sampling schedules for the second round of source water monitoring R309-215-15(2)(b) to the Executive Secretary.

(v) If EPA or the Executive Secretary does not respond to a system regarding its sampling schedule, the system must sample at the reported schedule.

(b) Systems must collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of paragraph (b)(i) or (ii) of this section applies.

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the Executive Secretary approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(ii)(A) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in R309-215-15(5), or the failure of an approved laboratory to analyze the sample, then the system must collect a replacement sample.

(B) The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system demonstrates that collecting a replacement sample within this time frame is not feasible or the Executive Secretary approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(c) Systems that fail to meet the criteria of paragraph (b) of this section for any source water sample required under R309-215-15(2) must revise their sampling schedules to add dates for collecting all missed samples. Systems must submit the revised schedule to the Executive Secretary for approval prior to when the system begins collecting the missed samples.

(4) Sampling locations.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the Executive Secretary may approve one set of monitoring results to be used to satisfy the requirements of R309-215-15(2) for all plants.

(b) (i) Systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve a system to collect a source water sample after chemical treatment. To grant this approval, the Executive Secretary must determine that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(c) Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water

addition.

(d) Bank filtration.

(i) Systems that receive Cryptosporidium treatment credit for bank filtration under R309-200-5(5)(a)(ii) must collect source water samples in the surface water prior to bank filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under R309-215-15(16)(c).

(e) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, must collect samples as specified in paragraph (e)(i) or (ii) of this section. The use of multiple sources during monitoring must be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems must collect samples from the tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must follow either paragraph (e)(ii)(A) or (B) of this section for sample analysis.

(A) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(B) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(f) Additional Requirements. Systems must submit a description of their sampling location(s) to the Executive Secretary at the same time as the sampling schedule required under R309-215-15(3). This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the Executive Secretary does not respond to a system regarding sampling location(s), the system must sample at the reported location(s).

(5) Analytical methods.

(a) Cryptosporidium. Systems must analyze for Cryptosporidium using Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002 or Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001, which are incorporated by reference. You may obtain a copy of these methods online from <http://www.epa.gov/safewater/disinfection/lt2> or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(i) Systems must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in paragraph (a) of this section. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in paragraph (a) of this section, up to a packed pellet volume of at least 2 mL.

(ii) (A) Matrix spike (MS) samples, as required by the methods in paragraph (a) of this section, must be spiked and filtered by a laboratory approved for Cryptosporidium analysis under R309-215-15(6).

(B) If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(iii) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples.

(b) E. coli. Systems must use methods for enumeration of E. coli in source water approved in R309-200-4(3) and (4).

(i) The time from sample collection to initiation of analysis may not exceed 30 hours unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve on a case-by-case basis the holding of an E. coli sample for up to 48 hours between sample collection and initiation of analysis if the Executive Secretary determines that analyzing an E. coli sample within 30 hours is not feasible. E. coli samples held between 30 to 48 hours must be analyzed by the Colilert reagent version of Standard Method 9223B as listed in R309-200-4(3) and (4).

(iii) Systems must maintain samples between 0 deg.C and 10 deg. C during storage and transit to the laboratory.

(c) Turbidity. Systems must use methods for turbidity measurement approved in R309-200-4(3) and (4).

(6) Approved laboratories.

(a) Cryptosporidium. Systems must have Cryptosporidium samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent State laboratory certification program.

(b) E. coli. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis under R309-200-4(3) and (4) is approved for E. coli analysis under this subpart when the laboratory uses the same technique for E. coli that the laboratory uses for R309-200-4(3), (4) and in R444-14-4(1).

(c) Turbidity. Measurements of turbidity must be made by a party approved by the State.

(7) Reporting source water monitoring results.

(a) Systems must report results from the source water monitoring required under R309-215-15(2) no later than 10 days after the end of the first month following the month when the sample is collected.

(b) (i) All systems serving at least 10,000 people must report the results from the initial source water monitoring required under R309-215-15(2)(a) to EPA electronically at <https://intranet.epa.gov/lt2/>.

(ii) If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results that EPA approves.

(c) Systems serving fewer than 10,000 people must report results from the initial source water monitoring required under R309-215-15(2)(a) to the Executive Secretary.

(d) All systems must report results from the second round of source water monitoring required under R309-215-15(2)(b)

to the Executive Secretary.

(e) Systems must report the applicable information in paragraphs (e)(i) and (ii) of this section for the source water monitoring required under R309-215-15(2).

(i) Systems must report the following data elements for each Cryptosporidium analysis:

- (A) PWS ID.
- (B) Facility ID.
- (C) Sample collection date.
- (D) Sample type (field or matrix spike).
- (E) Sample volume filtered (L), to nearest 1/4 L.
- (F) Was 100% of filtered volume examined.
- (G) Number of oocysts counted.

(H) For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(I) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(J) For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems must report the following data elements for each *E. coli* analysis:

- (A) PWS ID.
- (B) Facility ID.
- (C) Sample collection date.
- (D) Analytical method number.
- (E) Method type.
- (F) Source type (flowing stream, lake/reservoir, GWUDI).
- (G) *E. coli*/100 mL.
- (H) Turbidity. (Systems serving fewer than 10,000 people that are not required to monitor for turbidity under R309-215-15(2) are not required to report turbidity with their *E. coli* results.)

(8) Grandfathering previously collected data.

(a) (i) Systems may comply with the initial source water monitoring requirements of R309-215-15(2)(a) by grandfathering sample results collected before the system is required to begin monitoring (i.e., previously collected data). To be grandfathered, the sample results and analysis must meet the criteria in this section and the Executive Secretary must approve.

(ii) A filtered system may grandfather Cryptosporidium samples to meet the requirements of R309-215-15(2)(a) when the system does not have corresponding *E. coli* and turbidity samples. A system that grandfathers Cryptosporidium samples without *E. coli* and turbidity samples is not required to collect *E. coli* and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under R309-215-15(2)(a).

(b) *E. coli* sample analysis. The analysis of *E. coli* samples must meet the analytical method and approved laboratory requirements of R309-215-15(5) through R309-215-15(6).

(c) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples must meet the criteria in this paragraph.

(i) Laboratories analyzed Cryptosporidium samples using one of the analytical methods in paragraphs (c)(i)(A) through (D) of this section, which are incorporated by reference. You may obtain a copy of these methods on-line from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave, NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone:

202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(A) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002.

(B) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001.

(C) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-025.

(D) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-026.

(E) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-006.

(F) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-001.

(ii) For each Cryptosporidium sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters that EPA approved for the methods listed in paragraph (c)(1) of this section.

(d) Sampling location. The sampling location must meet the conditions in R309-215-15(4).

(e) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in R309-215-15(3)(b)(i) and (ii) if the system provides documentation of the condition when reporting monitoring results.

(i) The Executive Secretary may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the Executive Secretary specifies to ensure that the data used to comply with the initial source water monitoring requirements of R309-215-15(2)(a) are seasonally representative and unbiased.

(ii) Systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, systems must follow the monthly averaging procedure in R309-215-15(11)(b)(v) when calculating the bin classification for filtered systems.

(f) Reporting monitoring results for grandfathering. Systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph. Systems serving at least 10,000 people must report this information to EPA unless the Executive Secretary approves reporting to the Executive Secretary rather than EPA. Systems serving fewer than 10,000 people must report this information to the Executive Secretary.

(i) Systems must report that they intend to submit previously collected monitoring results for grandfathering. This report must specify the number of previously collected results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of R309-215-15(2)(a). Systems must report this information no later than the date the sampling schedule under R309-215-15(3) is required.

(ii) Systems must report previously collected monitoring

results for grandfathering, along with the associated documentation listed in paragraphs (f)(ii)(A) through (D) of this section, no later than two months after the applicable date listed in R309-215-15(2)(c).

(A) For each sample result, systems must report the applicable data elements in R309-215-15(7).

(B) Systems must certify that the reported monitoring results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

(C) Systems must certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Systems must report a description of the sampling location(s), which must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(D) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria specified in the methods listed in paragraph (c)(i) of this section were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(g) If the Executive Secretary determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the Executive Secretary may disapprove the data. Alternatively, the Executive Secretary may approve the previously collected data if the system reports additional source water monitoring data, as determined by the Executive Secretary, to ensure that the data set used under R309-215-15(11) represents average source water conditions for the system.

(h) If a system submits previously collected data that fully meet the number of samples required for initial source water monitoring under R309-215-15(2)(a) and some of the data are rejected due to not meeting the requirements of this section, systems must conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves. Systems are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

(9) Disinfection Profiling and Benchmarking Requirements - Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under R309-215-15(2)(a), a system that plans to make a significant change to its disinfection practice, as defined in paragraph (b) of this section, must develop disinfection profiles and calculate disinfection benchmarks for Giardia lamblia and viruses as described in R309-215-15(10). Prior to changing the disinfection practice, the system must notify the Executive Secretary and must include in this notice the information in paragraphs (a)(i) through (iii) of this section.

(i) A completed disinfection profile and disinfection benchmark for Giardia lamblia and viruses as described in R309-215-15(10).

(ii) A description of the proposed change in disinfection practice.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined

as follows:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; or

(iv) Any other modification identified by the Executive Secretary as a significant change to disinfection practice.

(10) Developing the disinfection profile and benchmark.

(a) Systems required to develop disinfection profiles under R309-215-15(9) must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If systems monitor more frequently, the monitoring frequency must be evenly spaced. Systems that operate for fewer than 12 months per year must monitor weekly during the period of operation. Systems must determine log inactivation for Giardia lamblia through the entire plant, based on $CT_{99.9}$ values in Tables 1.1 through 1.6, 2.1 and 3.1 of Section 141.74(b) in the code of Federal Regulations as applicable (available from the Division). Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the Executive Secretary.

(b) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in paragraphs (b)(i) through (iv) of this section. Systems with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(i) through (iv) of this section for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3) and (4).

(i) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(ii) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(iii) The disinfectant contact time(s) (t) must be determined during peak hourly flow.

(iv) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfectant application must be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under paragraph (b) of this section, systems may elect to meet the requirements of paragraphs (c)(i) or (ii) of this section.

(i) Systems that have at least one year of existing data that are substantially equivalent to data collected under the provisions of paragraph (b) of this section may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems may develop disinfection profiles using up to three years of existing data.

(ii) Systems may use disinfection profile(s) developed under R309-215-14 in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under R309-251-14 must develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(d) Systems must calculate the total inactivation ratio for Giardia lamblia as specified in paragraphs (d)(i) through (iii) of this section.

(i) Systems using only one point of disinfectant

application may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (d)(1)(i) or (ii) of this section.

(A) Determine one inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow.

(B) Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine the sum of ($CT_{calc}/CT_{99.9}$).

(ii) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CT_{calc}/CT_{99.9}$) value of each segment and the sum of ($CT_{calc}/CT_{99.9}$) must be calculated using the method in paragraph (d)(i)(B) of this section.

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (d)(i) or (d)(ii) of this section by 3.0.

(iv) Systems must calculate the log of inactivation for viruses using a protocol approved by the Executive Secretary.

(e) Systems must use the procedures specified in paragraphs (e)(i) and (ii) of this section to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated under paragraphs (a) through (d) of this section, systems must determine the lowest mean monthly level of both *Giardia lamblia* and virus inactivation. Systems must determine the mean *Giardia lamblia* and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly *Giardia lamblia* and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of *Giardia lamblia* and virus log inactivation in each year of profiling data.

(11) Treatment Technique Requirements - Bin classification for filtered systems.

(a) Following completion of the initial round of source water monitoring required under R309-215-15(2)(a), filtered systems must calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the Cryptosporidium results reported under R309-215-15(2)(a) and must follow the procedures in paragraphs (b)(i) through (v) of this section.

(b)(i) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for Cryptosporidium for only one year (i.e., collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under R309-215-15(2)(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of Cryptosporidium monitoring.

(v) If the monthly Cryptosporidium sampling frequency

varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (b)(i) through (iv) of this section.

(c) Filtered systems must determine their initial bin classification from the following and using the Cryptosporidium bin concentration calculated under paragraphs (a) and (b) of this section:

(i) Systems that are required to monitor for Cryptosporidium under R309-215-15(2):

(A) with a cryptosporidium concentration of less than 0.075 oocyst/L, the bin classification is Bin 1.

(B) with a cryptosporidium concentration of 0.075 oocysts/L to less than 1.0 oocysts/L, the bin classification is Bin 2.

(C) with a cryptosporidium concentration of 1.0 oocysts/L to less than 3.0 oocysts/L, the bin classification is Bin 3.

(D) with a cryptosporidium concentration of equal to or greater than 3.0 oocysts/L, the bin classification is Bin 4.

(ii) Systems serving fewer than 10,000 people and not required to monitor for Cryptosporidium under R309-215-15(2)(a)(iii), the concentration of cryptosporidium is not applicable and their bin classification is Bin 1.

(iii) Based on calculations in paragraph (a) or (d) of this section, as applicable.

(d) Following completion of the second round of source water monitoring required under R309-215-15(2)(b), filtered systems must recalculate their Cryptosporidium bin concentration using the Cryptosporidium results reported under R309-215-15(2)(b) and following the procedures in paragraphs (b)(i) through (iv) of this section. Systems must then redetermine their bin classification using this bin concentration and the table in paragraph (c) of this section.

(e)(i) Filtered systems must report their initial bin classification under paragraph (c) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in R309-215-15(2)(c).

(ii) Systems must report their bin classification under paragraph (d) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule in R309-215-15(2)(c).

(iii) The bin classification report to the Executive Secretary must include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(f) Failure to comply with the conditions of paragraph (e) of this section is a violation of the treatment technique requirement.

(12) Filtered system additional Cryptosporidium treatment requirements.

(a) Filtered systems must provide the level of additional treatment for Cryptosporidium specified in this paragraph based on their bin classification as determined under R309-215-15(11) and according to the schedule in R309-215-15(13). The filtration treatment used by the system in this paragraph must be utilized in full compliance with the requirements of R309-200-5(5), R309-200-7, R309-215-8 and 9.

(i) If the system bin classification is Bin 1 and the system uses:

(A) Conventional filtration treatment including softening there is no additional cryptosporidium treatment required.

(B) Direct filtration there is no additional cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is no additional cryptosporidium treatment required.

(D) Alternative filtration technologies there is no

additional cryptosporidium treatment required.

(ii) If the system bin classification is Bin 2 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 1-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 1.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 1-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 4.0-log.

(iii) If the system bin classification is Bin 3 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 2.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.0-log.

(iv) If the system bin classification is Bin 4 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2.5-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 3-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2.5-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.5-log.

(b)(i) Filtered systems must use one or more of the treatment and management options listed in R309-215-15(14), termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in paragraph (a) of this section.

(ii) Systems classified in Bin 3 and Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment required under paragraph (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in R309-215-15(15) through R309-215-15(19).

(c) Failure by a system in any month to achieve treatment credit by meeting criteria in R309-215-15(15) through R309-215-15(19) for microbial toolbox options that is at least equal to the level of treatment required in paragraph (a) of this section is a violation of the treatment technique requirement.

(d) If the Executive Secretary determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under R309-215-15(2)(a) or R309-215-15(2)(b), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take actions specified by the Executive Secretary to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in R309-215-15(14).

(13) Schedule for compliance with Cryptosporidium treatment requirements.

(a) Following initial bin classification under R309-215-15(11)(c), filtered systems must provide the level of treatment for Cryptosporidium required under R309-215-15(12) according

to the schedule in paragraph (c) of this section.

(b) Cryptosporidium treatment compliance dates.

(i) Systems that serve at least 100,000 people must comply with Cryptosporidium treatment requirements no later than April 1, 2012.

(ii) Systems that serve from 50,000 to 99,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2012.

(iii) Systems that serve from 10,000 to 49,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2013.

(iv) Systems that serve less than 10,000 people must comply with Cryptosporidium treatment requirements no later than October 1, 2014.

(v) The Executive Secretary may allow up to an additional two years for complying with the treatment requirement for systems making capital improvements.

(c) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under R309-215-15(11)(d), the system must provide the level of treatment for Cryptosporidium required under R309-215-15(12) on a schedule the Executive Secretary approves.

(14) Microbial toolbox options for meeting Cryptosporidium treatment requirements.

(a) Systems receive the treatment credits listed in the table in paragraph (b) of this section by meeting the conditions for microbial toolbox options described in R309-215-15(15) through R309-215-15(19). Systems apply these treatment credits to meet the treatment requirements in R309-215-15(12).

(b) The following sub-section summarizes options in the microbial toolbox and the Cryptosporidium treatment credit with design and implementation criteria.

(i) Source Protection and Management Toolbox Options:

(A) Watershed control program: 0.5-log credit for Executive Secretary-approved program comprising required elements, annual program status report to Executive Secretary, and regular watershed survey. Specific criteria are in R309-215-15(15) (a).

(B) Alternative source/intake management: No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in R309-215-15(15) (b).

(ii) Pre Filtration Toolbox Options:

(A) Presedimentation basin with coagulation: 0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative Executive Secretary-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through basins. Specific criteria are in R309-215-15(16) (a).

(B) Two-stage lime softening: 0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in R309-215-15(16) (b).

(C) Bank filtration: 0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. Systems using wells followed by filtration when conducting source water monitoring must sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in R309-215-15(16) (c).

(iii) Treatment Performance Toolbox Options:

(A) Combined filter performance: 0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU

in at least 95 percent of measurements each month. Specific criteria are in R309-215-15(17) (a).

(B) Individual filter performance: 0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in R309-215-15(17) (b).

(C) Demonstration of performance: Credit awarded to unit process or treatment train based on a demonstration to the Executive Secretary with a Executive Secretary-approved protocol. Specific criteria are in R309-215-15(17) (c).

(iv) Additional Filtration Toolbox Options:

(A) Bag or cartridge filters (individual filters): Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(B) Bag or cartridge filters (in series): Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(C) Membrane filtration: Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in R309-215-15(18) (b).

(D) Second stage filtration: 0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in R309-215-15(18) (c).

(E) Slow sand filters: 2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. Specific criteria are in R309-215-15(18) (d).

(v) Inactivation Toolbox Options:

(A) Chlorine dioxide: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(B) Ozone: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(C) UV: Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in R309-215-15(19) (d).

(15) Source toolbox components.

(a) Watershed control program. Systems receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this section.

(i) Systems that intend to apply for the watershed control program credit must notify the Executive Secretary of this intent no later than two years prior to the treatment compliance date applicable to the system in R309-215-15(13).

(ii) Systems must submit to the Executive Secretary a proposed watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13). The Executive Secretary must approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the elements in paragraphs (a)(ii)(A) through (D) of this section.

(A) Identification of an "area of influence" outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (a)(v)(B) of this section.

(B) Identification of both potential and actual sources of Cryptosporidium contamination and an assessment of the relative impact of these sources on the system's source water quality.

(C) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading

from sources of contamination to the system's source water.

(D) A statement of goals and specific actions the system will undertake to reduce source water Cryptosporidium levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(iii) Systems with existing watershed control programs (i.e., programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans must meet the criteria in paragraph (a)(ii) of this section and must specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(iv) If the Executive Secretary does not respond to a system regarding approval of a watershed control plan submitted under this section and the system meets the other requirements of this section, the watershed control program will be considered approved and 0.5 log Cryptosporidium treatment credit will be awarded unless and until the Executive Secretary subsequently withdraws such approval.

(v) Systems must complete the actions in paragraphs (a)(v)(A) through (C) of this section to maintain the 0.5-log credit.

(A) Submit an annual watershed control program status report to the Executive Secretary. The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the Executive Secretary or as the result of the watershed survey conducted under paragraph (a)(v)(B) of this section. It must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system must notify the Executive Secretary prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also list in its notification the actions the system will take to mitigate this effect.

(B) Undergo a watershed sanitary survey every three years for community water systems and every five years for non-community water systems and submit the survey report to the Executive Secretary. The survey must be conducted according to State guidelines and by persons the Executive Secretary approves.

(I) The watershed sanitary survey must meet the following criteria: encompass the region identified in the Executive Secretary-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels; and identify any significant new sources of Cryptosporidium.

(II) If the Executive Secretary determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by a date the Executive Secretary requires, which may be earlier than the regular date in paragraph (a)(v)(B) of this section.

(C) The system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The Executive Secretary may approve systems to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(vi) If the Executive Secretary determines that a system is

not carrying out the approved watershed control plan, the Executive Secretary may withdraw the watershed control program treatment credit.

(b) Alternative source. (i) A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the Executive Secretary approves, a system may determine its bin classification under R309-215-15(11) based on the alternative source monitoring results.

(ii) If systems conduct alternative source monitoring under paragraph (b)(i) of this section, systems must also monitor their current plant intake concurrently as described in R309-215-15(2).

(iii) Alternative source monitoring under paragraph (b)(i) of this section must meet the requirements for source monitoring to determine bin classification, as described in R309-215-15(2) through R309-215-15(7). Systems must report the alternative source monitoring results to the Executive Secretary, along with supporting information documenting the operating conditions under which the samples were collected.

(iv) If a system determines its bin classification under R309-215-15(11) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in R309-215-15(13).

(16) Pre-filtration treatment toolbox components.

(a) Presedimentation. Systems receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(i) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or GWUDI source.

(ii) The system must continuously add a coagulant to the presedimentation basin.

(iii) The presedimentation basin must achieve the performance criteria in paragraph (iii)(A) or (B) of this section.

(A) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows: $\log_{10}(\text{monthly mean of daily influent turbidity}) - \log_{10}(\text{monthly mean of daily effluent turbidity})$.

(B) Complies with Executive Secretary-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(b) Two-stage lime softening. Systems receive an additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GWUDI source.

(c) Bank filtration. Systems receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when they begin source water monitoring under R309-215-15(2)(a) must collect samples as described in R309-215-15(4)(d) and are not eligible for this credit.

(i) Wells with a ground water flow path of at least 25 feet receive 0.5-log treatment credit; wells with a ground water flow path of at least 50 feet receive 1.0-log treatment credit. The ground water flow path must be determined as specified in paragraph (c)(iv) of this section.

(ii) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(iii) Only horizontal and vertical wells are eligible for treatment credit.

(iv) For vertical wells, the ground water flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the ground water flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(v) Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the Executive Secretary and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Executive Secretary determines that microbial removal has been compromised, the Executive Secretary may revoke treatment credit until the system implements corrective actions approved by the Executive Secretary to remediate the problem.

(vi) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for credit under R309-215-15(17)(c).

(vii) Bank filtration demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in paragraphs (c)(i)-(v) of this section.

(A) The study must follow a Executive Secretary-approved protocol and must involve the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

(B) The study must include sampling both from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(17) Treatment performance toolbox components.

(a) Combined filter performance. Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month the system meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in R309-200-4(3) and (4).

(b) Individual filter performance. Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under paragraph (a) of this section, during any month the system meets the criteria in this paragraph. Compliance with these criteria must be based on individual filter turbidity monitoring as described in R309-215-9(4) or (5), as applicable.

(i) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(ii) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(iii) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of paragraph (b)(i) or (ii) of this section during any month does not receive a treatment technique violation under R309-215-15(12)(c) if the Executive Secretary determines the following:

(A) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

(B) The system has experienced no more than two such failures in any calendar year.

(c) Demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in R309-215-15(12) or R309-215-15(16) through R309-215-15(19) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(i) Systems cannot receive the prescribed treatment credit for any toolbox option in R309-215-15(16) through R309-215-15(19) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(ii) The demonstration of performance study must follow a Executive Secretary-approved protocol and must demonstrate the level of Cryptosporidium reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(iii) Approval by the Executive Secretary must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The Executive Secretary may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(18) Additional filtration toolbox components.

(a) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in paragraphs (a)(i) through (x) of this section. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of paragraphs (a)(i) through (ix) of this section to the Executive Secretary. The filters must treat the entire plant flow taken from a surface water source.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in paragraphs (a)(ii) through (a)(ix) of this section. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria specified in paragraphs (a)(ii) through (ix) of this section.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more

efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(iv) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation: Maximum Feed Concentration = $1 \times 10^4 \times$ (Filtrate Detection Limit).

(v) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(vii) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation: $LRV = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$. Where: LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p must be set equal to the detection limit.

(viii) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRV_{filter}) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest LRV_{filter} among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of LRV_{filter} values for the various filters tested. The percentile is defined by $(i/(n+1))$ where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Executive Secretary.

(b) Membrane filtration.

(i) Systems receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in R309-110 are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under paragraph (b)(i)(A) and (B) of this section.

(A) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (b)(ii) of this section.

(B) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in paragraph (b)(iii) of

this section.

(ii) Challenge Testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the Executive Secretary. Challenge testing must be conducted according to the criteria in paragraphs (b)(ii)(A) through (G) of this section. Systems may use data from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria in paragraphs (b)(ii)(A) through (G) of this section.

(A) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(B) Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(C) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation: Maximum Feed Concentration = $3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$.

(D) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(E) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation: $\text{LRV} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$. Where: LRV = log removal value demonstrated during the challenge test; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(F) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ($\text{LRV}_{\text{C-Test}}$). If fewer than 20 modules are tested, then $\text{LRV}_{\text{C-Test}}$ is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then $\text{LRV}_{\text{C-Test}}$ is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by $(i/(n+1))$ where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(G) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the

system that was not directly challenge tested in order to verify *Cryptosporidium* removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(H) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Executive Secretary.

(iii) Direct integrity testing. Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in paragraphs (b)(iii)(A) through (F) of this section. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

(A) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(B) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(C) The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the Executive Secretary, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either paragraph (b)(iii)(C)(I) or (II) of this section as applicable to the type of direct integrity test the system uses.

(I) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation: $\text{LRV}_{\text{DIT}} = \text{LOG}_{10} (Q_p / (\text{VCF} \times Q_{\text{breach}}))$ Where: LRV_{DIT} = the sensitivity of the direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(II) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation: $\text{LRV}_{\text{DIT}} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ Where: LRV_{DIT} = the sensitivity of the direct integrity test; C_f = the typical feed concentration of the marker used in the test; and C_p = the filtrate concentration of the marker from an integral membrane unit.

(D) Systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the Executive Secretary.

(E) If the result of a direct integrity test exceeds the control limit established under paragraph (b)(iii)(D) of this section, the system must remove the membrane unit from service. Systems must conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(F) Systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The Executive Secretary may approve less frequent testing, based on demonstrated

process reliability, the use of multiple barriers effective for *Cryptosporidium*, or reliable process safeguards.

(iv) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in paragraphs (b)(iv)(A) through (E) of this section. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in paragraphs (b)(iii)(A) through (E) of this section is not subject to the requirements for continuous indirect integrity monitoring. Systems must submit a monthly report to the Executive Secretary summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(A) Unless the Executive Secretary approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(B) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(C) Continuous monitoring must be separately conducted on each membrane unit.

(D) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in paragraphs (b)(iii)(A) through (E) of this section.

(E) If indirect integrity monitoring includes a Executive Secretary-approved alternative parameter and if the alternative parameter exceeds a Executive Secretary-approved control limit for a period greater than 15 minutes, direct integrity testing must immediately be performed on the associated membrane units as specified in paragraphs (b)(iii)(A) through (E) of this section.

(c) Second stage filtration. Systems receive 0.5-log *Cryptosporidium* treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration if the Executive Secretary approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or GWUDI source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(d) Slow sand filtration (as secondary filter). Systems are eligible to receive 2.5-log *Cryptosporidium* treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or GWUDI source and no disinfectant residual is present in the influent water to the slow sand filtration process. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process. This paragraph does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(19) Inactivation toolbox components.

(a) Calculation of CT values. (i) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under paragraph (b) or (c) of this section must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in R309-200-4(3) and (4).

(ii) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with

a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the *Cryptosporidium* CT values in each segment to determine the total CT for the treatment plant.

(b) CT values for chlorine dioxide and ozone. (i) Systems receive the *Cryptosporidium* treatment credit listed in this paragraph by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in paragraph (a) of this section.

(ii) CT values ((MG)(MIN)/L) for *Cryptosporidium* inactivation by Chlorine Dioxide listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:

(I) less than or equal to 0.5 degrees: 159;

(II) 1 degree: 153;

(III) 2 degrees: 140;

(IV) 3 degrees: 128;

(V) 5 degrees: 107;

(VI) 7 degrees: 90;

(VII) 10 degrees: 69;

(VIII) 15 degrees: 45;

(IX) 20 degrees: 29;

(X) 25 degrees: 19; and

(XI) 30 degrees: 12.

(B) 0.5 Log Credit:

(I) less than or equal to 0.5 degrees: 319;

(II) 1 degree: 305;

(III) 2 degrees: 279;

(IV) 3 degrees: 256;

(V) 5 degrees: 214;

(VI) 7 degrees: 180;

(VII) 10 degrees: 138;

(VIII) 15 degrees: 89;

(IX) 20 degrees: 58;

(X) 25 degrees: 38; and

(XI) 30 degrees: 24.

(C) 1.0 Log Credit:

(I) less than or equal to 0.5 degrees: 637;

(II) 1 degree: 610;

(III) 2 degrees: 558;

(IV) 3 degrees: 511;

(V) 5 degrees: 429;

(VI) 7 degrees: 360;

(VII) 10 degrees: 277;

(VIII) 15 degrees: 179;

(IX) 20 degrees: 116;

(X) 25 degrees: 75; and

(XI) 30 degrees: 49.

(D) 1.5 Log Credit:

(I) less than or equal to 0.5 degrees: 956;

(II) 1 degree: 915;

(III) 2 degrees: 838;

(IV) 3 degrees: 767;

(V) 5 degrees: 643;

(VI) 7 degrees: 539;

(VII) 10 degrees: 415;

(VIII) 15 degrees: 268;

(IX) 20 degrees: 174;

(X) 25 degrees: 113; and

(XI) 30 degrees: 73.

(E) 2.0 Log Credit:

(I) less than or equal to 0.5 degrees: 1275;

(II) 1 degree: 1220;

(III) 2 degrees: 1117;

(IV) 3 degrees: 1023;

(V) 5 degrees: 858;

(VI) 7 degrees: 719;

(VII) 10 degrees: 553;

(VIII) 15 degrees: 357;

- (IX) 20 degrees: 232;
- (X) 25 degrees: 150; and
- (XI) 30 degrees: 98.
- (F) 2.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 1594;
- (II) 1 degree: 1525;
- (III) 2 degrees: 1396;
- (IV) 3 degrees: 1278;
- (V) 5 degrees: 1072;
- (VI) 7 degrees: 899;
- (VII) 10 degrees: 691;
- (VIII) 15 degrees: 447;
- (IX) 20 degrees: 289;
- (X) 25 degrees: 188; and
- (XI) 30 degrees: 122.
- (G) 3.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 1912;
- (II) 1 degree: 1830;
- (III) 2 degrees: 1675;
- (IV) 3 degrees: 1534;
- (V) 5 degrees: 1286;
- (VI) 7 degrees: 1079;
- (VII) 10 degrees: 830;
- (VIII) 15 degrees: 536;
- (IX) 20 degrees: 347;
- (X) 25 degrees: 226; and
- (XI) 30 degrees: 147.

(F) Systems may use this equation to determine log credit between the indicated values above: $\text{Log credit} = (0.001506 \times (1.09116)^{\text{Temp}}) \times \text{CT}$.

(ii) Systems receive the Cryptosporidium treatment credit listed in this paragraph by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (a) of this section. CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Ozone listed by the log credit with inactivation listed by water temperature in degrees Celsius.

- (A) 0.25 Log Credit:
- (I) less than or equal to 0.5 degrees: 6.0;
- (II) 1 degree: 5.8;
- (III) 2 degrees: 5.2;
- (IV) 3 degrees: 4.8;
- (V) 5 degrees: 4.0;
- (VI) 7 degrees: 3.3;
- (VII) 10 degrees: 2.5;
- (VIII) 15 degrees: 1.6;
- (IX) 20 degrees: 1.0;
- (X) 25 degrees: 0.6; and
- (XI) 30 degrees: 0.39.
- (B) 0.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 12;
- (II) 1 degree: 12;
- (III) 2 degrees: 10;
- (IV) 3 degrees: 9.5;
- (V) 5 degrees: 7.9;
- (VI) 7 degrees: 6.5;
- (VII) 10 degrees: 4.9;
- (VIII) 15 degrees: 3.1;
- (IX) 20 degrees: 2.0;
- (X) 25 degrees: 1.2; and
- (XI) 30 degrees: 0.78.
- (C) 1.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 24;
- (II) 1 degree: 23;
- (III) 2 degrees: 21;
- (IV) 3 degrees: 19;
- (V) 5 degrees: 16;
- (VI) 7 degrees: 13;
- (VII) 10 degrees: 9.9;
- (VIII) 15 degrees: 6.2;

- (IX) 20 degrees: 3.9;
- (X) 25 degrees: 2.5; and
- (XI) 30 degrees: 1.6.
- (D) 1.5 Log Credit:
- (I) less than or equal to 0.5 degrees: 36;
- (II) 1 degree: 35;
- (III) 2 degrees: 31;
- (IV) 3 degrees: 29;
- (V) 5 degrees: 24;
- (VI) 7 degrees: 20;
- (VII) 10 degrees: 15;
- (VIII) 15 degrees: 9.3;
- (IX) 20 degrees: 5.9;
- (X) 25 degrees: 3.7; and
- (XI) 30 degrees: 2.4.
- (E) 2.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 48;
- (II) 1 degree: 46;
- (III) 2 degrees: 42;
- (IV) 3 degrees: 38;
- (V) 5 degrees: 32;
- (VI) 7 degrees: 26;
- (VII) 10 degrees: 20;
- (VIII) 15 degrees: 12;
- (IX) 20 degrees: 7.8;
- (X) 25 degrees: 4.9; and
- (XI) 30 degrees: 3.1.

(F) 2.5 Log Credit:

- (I) less than or equal to 0.5 degrees: 60;
- (II) 1 degree: 58;
- (III) 2 degrees: 52;
- (IV) 3 degrees: 48;
- (V) 5 degrees: 40;
- (VI) 7 degrees: 33;
- (VII) 10 degrees: 25;
- (VIII) 15 degrees: 16;
- (IX) 20 degrees: 9.8;
- (X) 25 degrees: 6.2; and
- (XI) 30 degrees: 3.9.
- (G) 3.0 Log Credit:
- (I) less than or equal to 0.5 degrees: 72;
- (II) 1 degree: 69;
- (III) 2 degrees: 63;
- (IV) 3 degrees: 57;
- (V) 5 degrees: 47;
- (VI) 7 degrees: 39;
- (VII) 10 degrees: 30;
- (VIII) 15 degrees: 19;
- (IX) 20 degrees: 12;
- (X) 25 degrees: 7.4; and
- (XI) 30 degrees: 4.7.

(F) Systems may use this equation to determine log credit between the indicated values: $\text{Log credit} = (0.0397 \times (1.09757)^{\text{Temp}}) \times \text{CT}$.

(c) Site-specific study. The Executive Secretary may approve alternative chlorine dioxide or ozone CT values to those listed in paragraph (b) above on a site-specific basis. The Executive Secretary must base this approval on a site-specific study a system conducts that follows a protocol approved by the Executive Secretary.

(d) Ultraviolet light. Systems receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in paragraph (d)(i) of this section. Systems must validate and monitor UV reactors as described in paragraph (d)(ii) and (iii) of this section to demonstrate that they are achieving a particular UV dose value for treatment credit.

(i) UV dose table. The treatment credits listed in Table 215-5 are for UV light at a wavelength of 254 nm as produced

by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing, as described in paragraph (d)(ii). The UV dose values in Table 215-5 are applicable only to post-filter applications of UV in filtered systems.

TABLE 215-5
UV Dose Table for Cryptosporidium,
Giardia lamblia, and Virus Inactivation Credit

Log credit	Cryptosporidium UV dose (mJ/cm ²)	Giardia lamblia UV dose (mJ/cm ²)	Virus UV dose (mJ/cm ²)
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

(ii) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in paragraph (d)(i) of this section (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

(A) When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(B) Validation testing must include the following: Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(C) The Executive Secretary may approve an alternative approach to validation testing.

(iii) Reactor monitoring.

(A) Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under paragraph (d)(ii) of this section. This monitoring must include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the Executive Secretary designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol the Executive Secretary approves.

(B) To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in paragraphs (d)(i) and (ii) of this section. Systems must demonstrate compliance with this condition by the monitoring required under paragraph (d)(iii)(A) of this section.

(20) Reporting requirements.

(a) Systems must report sampling schedules under R309-215-15(3) and source water monitoring results under R309-215-15(7) unless they notify the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d).

(b) Filtered systems must report their Cryptosporidium bin classification as described in R309-215-15(11).

(c) Systems must report disinfection profiles and benchmarks to the Executive Secretary as described in R309-215-15(9) through R309-215-15(10) prior to making a significant change in disinfection practice.

(d) Systems must report to the Executive Secretary in accordance with the following information on the following schedule for any microbial toolbox options used to comply with treatment requirements under R309-215-15(12). Alternatively, the Executive Secretary may approve a system to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.

(i) Watershed control program (WCP).

(A) Notice of intention to develop a new or continue an existing watershed control program no later than two years before the applicable treatment compliance date in R309-215-15(13).

(B) Watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13).

(C) Annual watershed control program status report every 12 months, beginning one year after the applicable treatment compliance date in R309-215-15(13).

(D) Watershed sanitary survey report:

(I) For community water systems, every three years beginning three years after the applicable treatment compliance date in R309-215-15(13).

(II) For noncommunity water systems, every five years beginning five years after the applicable treatment compliance date in R309-215-15(13).

(ii) Alternative source/intake management:

(A) Verification that system has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results No later than the applicable treatment compliance date in R309-215-15(13).

(iii) Presedimentation: Monthly verification of the following:

(A) Continuous basin operation

(B) Treatment of 100% of the flow

(C) Continuous addition of a coagulant

(D) At least 0.5-log mean reduction of influent turbidity or compliance with alternative Executive Secretary-approved performance criteria.

(E) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(iv) Two-stage lime softening: Monthly verification of the following:

(A) Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration.

(B) Both stages treated 100% of the plant flow.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(v) Bank filtration:

(A) Initial demonstration of the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Unconsolidated, predominantly sandy aquifer

(II) Setback distance of at least 25 ft. (0.5-log credit) or 50 ft. (1.0-log credit).

(B) If monthly average of daily max turbidity is greater than 1 NTU then system must report result and submit an assessment of the cause. The report is due within 30 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vi) Combined filter performance:

(A) Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4 hour CFE measurements taken each month.

(B) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vii) Individual filter performance. Monthly verification

of the following:

(A) Individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter.

(B) No individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(viii) Demonstration of performance.

(A) Results from testing following a Executive Secretary approved protocol no later than the applicable treatment compliance date in R309-215-15(13).

(B) As required by the Executive Secretary, monthly verification of operation within conditions of Executive Secretary approval for demonstration of performance credit within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(ix) Bag filters and cartridge filters.

(A) Demonstration that the following criteria are met no later than the applicable treatment compliance date in R309-215-15(13).

(I) Process meets the definition of bag or cartridge filtration;

(II) Removal efficiency established through challenge testing that meets criteria in this subpart.

(B) Monthly verification that 100% of plant flow was filtered within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(x) Membrane filtration.

(A) Results of verification testing demonstrating the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Removal efficiency established through challenge testing that meets criteria in this subpart;

(II) Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline.

(B) Monthly report summarizing the following within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(I) All direct integrity tests above the control limit;

(II) If applicable, any turbidity or alternative Executive Secretary-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.

(xi) Second stage filtration: Monthly verification that 100% of flow was filtered through both stages and that first stage was preceded by coagulation step within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xii) Slow sand filtration (as secondary filter): Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100% of flow from surface water sources within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiii) Chlorine dioxide: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiv) Ozone: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xv) UV:

(A) Validation test results demonstrating operating conditions that achieve required UV dose no later than the applicable treatment compliance date in R309-215-15(13).

(B) Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in R309-215-15(19) (d) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(21) Recordkeeping requirements.

(a) Systems must keep results from the initial round of source water monitoring under R309-215-15(2)(a) and the second round of source water monitoring under R309-215-15(2)(b) until 3 years after bin classification under R309-215-15(11) for filtered systems for the particular round of monitoring.

(b) Systems must keep any notification to the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d) for 3 years.

(c) Systems must keep the results of treatment monitoring associated with microbial toolbox options under R309-215-15(15) through R309-215-15(19) for 3 years.

(22) Requirements for Sanitary Surveys Performed by EPA. Requirements to respond to significant deficiencies identified in sanitary surveys performed by EPA.

(a) A sanitary survey is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.

(b) For the purposes of this section, a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

(c) For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(d) Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system.

R309-215-16. Groundwater Rule.

(1) Applicability: This subpart applies to all public water systems that use ground water except that it does not apply to public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment. For the purposes of this subpart, "ground water system" is defined as any public water system meeting this applicability Executive Secretary, including consecutive systems receiving finished ground water.

(a) General requirements: Systems subject to this subpart must comply with the following requirements:

(i) Sanitary survey information requirements for all ground water systems as described in R309-100-7.

(ii) Microbial source water monitoring requirements for ground water systems that do not treat all of their ground water to at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or an Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer as described in R309-215-16(2).

(iii) Treatment technique requirements, described in R309-215-16(3), that apply to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under R309-215-16(2), or that have significant deficiencies that are identified by the Executive Secretary or that are identified by EPA under SDWA section 1445. A ground water system with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of this subpart must implement one or more of the following corrective action options: correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer.

(b) Ground water systems that provide at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in R309-215-16(3)(b).

(c) If requested by the Executive Secretary, ground water systems must provide the Executive Secretary with any existing information that will enable the Executive Secretary to perform a hydrogeologic sensitivity assessment. For the purposes of this subpart, "hydrogeologic sensitivity assessment" is a determination of whether ground water systems obtain water from hydrogeologically sensitive settings.

(d) Compliance date: Ground water systems must comply, unless otherwise noted, with the requirements of this subpart beginning December 1, 2009.

(2) Ground water source microbial monitoring and analytical methods.

(a) Triggered source water monitoring.

(i) General requirements. A ground water system must conduct triggered source water monitoring if the conditions identified in paragraphs (a)(i)(A) and (a)(i)(B) of this section exist.

(A) The system does not provide at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and

(B) The system is notified that a sample collected under R309-210-5(1) is total coliform-positive and the sample is not invalidated under R309-210-5(4).

(ii) Sampling Requirements. A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under R309-210-5(1), except as provided in paragraph (a)(ii)(B) of this section.

(A) The Executive Secretary may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Executive Secretary must specify how much time the system has to collect the sample.

(B) If approved by the Executive Secretary, systems with more than one ground water source may meet the requirements of this paragraph (a)(ii) by sampling a representative ground water source or sources. Systems must submit for Executive Secretary approval a triggered source water monitoring plan that identifies one or more ground water sources that are representative of each monitoring site in the system's sample site plan under R309-210-5(1)(d) and that the system intends to use for representative sampling under this paragraph.

(C) A ground water system serving 1,000 people or fewer

may use a repeat sample collected from a ground water source to meet both the requirements of R309-210-5(2)(a) and to satisfy the monitoring requirements of paragraph (a)(ii) of this section for that ground water source only if the Executive Secretary approves the use of E. coli as a fecal indicator for source water monitoring under this paragraph (a). If the repeat sample collected from the ground water source is E.coli positive, the system must comply with paragraph (a)(iii) of this section.

(iii) Additional Requirements. If the Executive Secretary does not require corrective action under R309-215-16(3)(a)(ii) for a fecal indicator-positive source water sample collected under paragraph (a)(ii) of this section that is not invalidated under paragraph (d) of this section, the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(iv) Consecutive and Wholesale Systems.

(A) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample collected under R309-210-5(1) must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

(B) In addition to the other requirements of this paragraph (a), a wholesale ground water system must comply with paragraphs (a)(iv)(B)(I) and (a)(iv)(B)(II) of this section.

(I) A wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under R309-210-5(1) is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under paragraph (a)(ii) of this section and analyze it for a fecal indicator under paragraph (c) of this section.

(II) If the sample collected under paragraph (a)(iv)(B)(I) of this section is fecal indicator-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and must meet the requirements of paragraph (a)(iii) of this section.

(v) Exceptions to the Triggered Source Water Monitoring Requirements. A ground water system is not required to comply with the source water monitoring requirements of paragraph (a) of this section if either of the following conditions exists:

(A) The Executive Secretary determines, and documents in writing, that the total coliform-positive sample collected under R309-210-5(1) is caused by a distribution system deficiency; or

(B) The total coliform-positive sample collected under R309-210-5(1) is collected at a location that meets Executive Secretary criteria for distribution system conditions that will cause total coliform-positive samples.

(b) Assessment Source Water Monitoring. If directed by the Executive Secretary, ground water systems must conduct assessment source water monitoring that meets Executive Secretary-determined requirements for such monitoring. A ground water system conducting assessment source water monitoring may use a triggered source water sample collected under paragraph (a)(ii) of this section to meet the requirements of paragraph (b) of this section. Executive Secretary-determined assessment source water monitoring requirements may include:

(i) collection of a total of 12 ground water source samples that represent each month the system provides ground water to the public,

(ii) collection of samples from each well unless the system obtains written Executive Secretary approval to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting,

(iii) collection of a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used,

(iv) analysis of all ground water source samples in accordance with R309-210-4(1) and R309-200-4(3) for the presence of *E. coli*, enterococci, or coliphage,

(v) collection of ground water source samples at a location prior to any treatment of the ground water source unless the Executive Secretary approves a sampling location after treatment, and

(vi) collection of ground water source samples at the well itself unless the system's configuration does not allow for sampling at the well itself and the Executive Secretary approves an alternate sampling location that is representative of the water quality of that well.

(c) Invalidation of a fecal indicator-positive ground water source sample.

(i) A ground water system may obtain Executive Secretary invalidation of a fecal indicator-positive ground water source sample collected under paragraph (a) of this section only under the conditions specified in paragraphs (c)(i)(A) and (B) of this section.

(A) The system provides the Executive Secretary with written notice from the laboratory that improper sample analysis occurred; or

(B) The Executive Secretary determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is not related to source water quality.

(ii) If the Executive Secretary invalidates a fecal indicator-positive ground water source sample, the ground water system must collect another source water sample under paragraph (a) of this section within 24 hours of being notified by the Executive Secretary of its invalidation decision and have it analyzed for the same fecal indicator using the analytical methods in paragraph (c) of this section. The Executive Secretary may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Executive Secretary must specify how much time the system has to collect the sample.

(d) Sampling location.

(i) Any ground water source sample required under paragraph (a) of this section must be collected at a location prior to any treatment of the ground water source unless the Executive Secretary approves a sampling location after treatment.

(ii) If the system's configuration does not allow for sampling at the well itself, the system may collect a sample at a Executive Secretary-approved location to meet the requirements of paragraph (a) of this section if the sample is representative of the water quality of that well.

(e) New Sources. If directed by the Executive Secretary, a ground water system that places a new ground water source into service after November 30, 2009, must conduct assessment source water monitoring under paragraph (b) of this section. If directed by the Executive Secretary, the system must begin monitoring before the ground water source is used to provide water to the public.

(f) Public Notification. A ground water system with a ground water source sample collected under paragraph (a) or (b) of this section that is fecal indicator-positive and that is not invalidated under paragraph (d) of this section, including consecutive systems served by the ground water source, must conduct public notification under R309-220-5.

(g) Monitoring Violations. Failure to meet the requirements of paragraphs (a)-(f) of this section is a monitoring violation and requires the ground water system to provide public notification under R309-220-7.

(3) Treatment technique requirements for ground water systems.

(a) Ground water systems with significant deficiencies or source water fecal contamination.

(i) The treatment technique requirements of this section must be met by ground water systems when a significant deficiency is identified or when a ground water source sample collected under R309-215-16(2)(a)(iii) is fecal indicator-positive.

(ii) If directed by the Executive Secretary, a ground water system with a ground water source sample collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) that is fecal indicator-positive must comply with the treatment technique requirements of this section.

(iii) When a significant deficiency is identified at a public water system that uses both ground water and surface water or ground water under the direct influence of surface water, the system must comply with provisions of this paragraph except in cases where the Executive Secretary determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or ground water under the direct influence of surface water.

(iv) Unless the Executive Secretary directs the ground water system to implement a specific corrective action, the ground water system must consult with the Executive Secretary regarding the appropriate corrective action within 30 days of receiving written notice from the Executive Secretary of a significant deficiency, written notice from a laboratory that a ground water source sample collected under R309-215-16(2)(a)(iii) was found to be fecal indicator-positive, or direction from the Executive Secretary that a fecal indicator-positive collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) requires corrective action. For the purposes of this subpart, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Executive Secretary determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(v) Within 120 days (or earlier if directed by the Executive Secretary) of receiving written notification from the Executive Secretary of a significant deficiency, written notice from a laboratory that a ground water source sample collected under R309-215-16(2)(a)(iii) was found to be fecal indicator-positive, or direction from the Executive Secretary that a fecal indicator-positive sample collected under R309-215-16(2)(a)(ii), R309-215-16(2)(a)(iv), or R309-215-16(2)(b) requires corrective action, the ground water system must either:

(A) have completed corrective action in accordance with applicable Executive Secretary plan review processes or other Executive Secretary guidance or direction, if any, including Executive Secretary-specified interim measures; or

(B) be in compliance with a Executive Secretary-approved corrective action plan and schedule subject to the conditions specified in paragraphs (a)(v)(B)(I) and (a)(v)(B)(II) of this section.

(I) Any subsequent modifications to a Executive Secretary-approved corrective action plan and schedule must also be approved by the Executive Secretary.

(II) If the Executive Secretary specifies interim measures for protection of the public health pending Executive Secretary approval of the corrective action plan and schedule or pending completion of the corrective action plan, the system must comply with these interim measures as well as with any schedule specified by the Executive Secretary.

(vi) Corrective Action Alternatives. Ground water systems that meet the conditions of paragraph (a)(i) or (a)(ii) of this section must implement one or more of the following

corrective action alternatives:

- (A) correct all significant deficiencies;
- (B) provide an alternate source of water;
- (C) eliminate the source of contamination; or
- (D) provide treatment that reliably achieves at least 4-log

treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(vii) Special notice to the public of significant deficiencies or source water fecal contamination.

(A) In addition to the applicable public notification requirements of R309-220-5, a community ground water system that receives notice from the Executive Secretary of a significant deficiency or notification of a fecal indicator-positive ground water source sample that is not invalidated by the Executive Secretary under R309-215-16(2)(d) must inform the public served by the water system under R309-225-5(8) of the fecal indicator-positive source sample or of any significant deficiency that has not been corrected. The system must continue to inform the public annually until the significant deficiency is corrected or the fecal contamination in the ground water source is determined by the Executive Secretary to be corrected under paragraph (a)(v) of this section.

(B) In addition to the applicable public notification requirements of R309-220-5, a non-community ground water system that receives notice from the Executive Secretary of a significant deficiency must inform the public served by the water system in a manner approved by the Executive Secretary of any significant deficiency that has not been corrected within 12 months of being notified by the Executive Secretary, or earlier if directed by the Executive Secretary. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

(I) The nature of the significant deficiency and the date the significant deficiency was identified by the Executive Secretary;

(II) The Executive Secretary-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed; and

(III) For systems with a large proportion of non-English speaking consumers, as determined by the Executive Secretary, information in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(C) If directed by the Executive Secretary, a non-community water system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under paragraph (a)(vii)(B) of this section.

(b) Compliance monitoring.

(i) Existing ground water sources. A ground water system that is not required to meet the source water monitoring requirements of this subpart for any ground water source because it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for any ground water source before December 1, 2009, must notify the Executive Secretary in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the specified ground water source and begin compliance monitoring in accordance with paragraph (b)(iii) of this section by December 1, 2009. Notification to the Executive Secretary must include engineering, operational, or other information that the Executive Secretary requests to evaluate the submission. If the system subsequently

discontinues 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source, the system must conduct ground water source monitoring as required under R309-215-16(2).

(ii) New ground water sources. A ground water system that places a ground water in service after November 30, 2009, that is not required to meet the source water monitoring requirements of this subpart because the system provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source must comply with the requirements of paragraphs (b)(ii)(A), (b)(ii)(B) and (b)(ii)(C) of this section.

(A) The system must notify the Executive Secretary in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source. Notification to the Executive Secretary must include engineering, operational, or other information that the Executive Secretary requests to evaluate the submission.

(B) The system must conduct compliance monitoring as required under R309-215-16(3)(b)(iii) of this subpart within 30 days of placing the source in service.

(C) The system must conduct ground water source monitoring under R309-215-16(2) if the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(iii) Monitoring requirements. A ground water system subject to the requirements of paragraph (b)(i) or (b)(ii) of this section must monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer as follows:

(A) Chemical disinfection.

(I) Ground water systems serving greater than 3,300 people. A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in R444-14-4 at a location approved by the Executive Secretary and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Executive Secretary-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.

(II) Ground water systems serving 3,300 or fewer people. A ground water system that serves 3,300 or fewer people must monitor the residual disinfectant concentration using analytical methods specified in R444-14-4 at a location approved by the Executive Secretary and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Executive Secretary-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. The ground water system must take a daily grab sample during the hour of peak flow or at another time specified by the Executive Secretary. If any daily grab sample measurement falls below the Executive Secretary-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to

the Executive Secretary-determined level. Alternatively, a ground water system that serves 3,300 or fewer people may monitor continuously and meet the requirements of paragraph (b)(iii)(A)(I) of this section.

(B) Membrane filtration. A ground water system that uses membrane filtration to meet the requirements of this subpart must monitor the membrane filtration process in accordance with all Executive Secretary-specified monitoring requirements and must operate the membrane filtration in accordance with all Executive Secretary-specified compliance requirements. A ground water system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when:

(I) The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses;

(II) The membrane process is operated in accordance with Executive Secretary-specified compliance requirements; and

(III) The integrity of the membrane is intact.

(C) Alternative treatment. A ground water system that uses a Executive Secretary-approved alternative treatment to meet the requirements of this subpart by providing at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer must:

(I) Monitor the alternative treatment in accordance with all Executive Secretary-specified monitoring requirements; and

(II) Operate the alternative treatment in accordance with all compliance requirements that the Executive Secretary determines to be necessary to achieve at least 4-log treatment of viruses.

(c) Discontinuing treatment. A ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source if the Executive Secretary determines and documents in writing that 4-log treatment of viruses is no longer necessary for that ground water source. A system that discontinues 4-log treatment of viruses is subject to the source water monitoring and analytical methods requirements of R309-215-16(2) of this subpart.

(d) Failure to meet the monitoring requirements of paragraph (b) of this section is a monitoring violation and requires the ground water system to provide public notification under R309-220-7.

(4) Treatment technique violations for ground water systems.

(a) A ground water system with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the Executive Secretary) of receiving written notice from the Executive Secretary of the significant deficiency, the system:

(i) Does not complete corrective action in accordance with any applicable Executive Secretary plan review processes or other Executive Secretary guidance and direction, including Executive Secretary specified interim actions and measures, or

(ii) Is not in compliance with a Executive Secretary-approved corrective action plan and schedule.

(b) Unless the Executive Secretary invalidates a fecal indicator-positive ground water source sample under R309-215-16(2)(d), a ground water system is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the Executive Secretary) of meeting the conditions of R309-215-16(3)(a)(i) or R309-215-16(3)(a)(ii), the system:

(i) Does not complete corrective action in accordance with any applicable Executive Secretary plan review processes or other Executive Secretary guidance and direction, including Executive Secretary-specified interim measures, or

(ii) Is not in compliance with a Executive Secretary-approved corrective action plan and schedule.

(c) A ground water system subject to the requirements of R309-215-16(3)(b)(iii) that fails to maintain at least 4-log treatment of viruses (using inactivation, removal, or a Executive Secretary-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source is in violation of the treatment technique requirement if the failure is not corrected within four hours of determining the system is not maintaining at least 4-log treatment of viruses before or at the first customer.

(d) Ground water system must give public notification under R309-220-6 for the treatment technique violations specified in paragraphs (a), (b) and (c) of this section.

(5) Reporting and recordkeeping for ground water systems.

(a) Reporting. In addition to the requirements of R309-105-16, a ground water system regulated under this subpart must provide the following information to the Executive Secretary:

(i) A ground water system conducting compliance monitoring under R309-215-16(3)(b) must notify the Executive Secretary any time the system fails to meet any Executive Secretary-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water system must notify the Executive Secretary as soon as possible, but in no case later than the end of the next business day.

(ii) After completing any corrective action under R309-215-16(3)(a), a ground water system must notify the Executive Secretary within 30 days of completion of the corrective action.

(iii) If a ground water system subject to the requirements of R309-215-16(2)(a) does not conduct source water monitoring under R309-215-16(2)(a)(v)(B), the system must provide documentation to the Executive Secretary within 30 days of the total coliform positive sample that it met the Executive Secretary criteria.

(b) Recordkeeping. In addition to the requirements of R309-105-17, a ground water system regulated under this subpart must maintain the following information in its records:

(i) Documentation of corrective actions. Documentation shall be kept for a period of not less than ten years.

(ii) Documentation of notice to the public as required under R309-215-16(3)(a)(vii). Documentation shall be kept for a period of not less than three years.

(iii) Records of decisions under R309-215-16(2)(a)(v)(B) and records of invalidation of fecal indicator-positive ground water source samples under R309-215-16(2)(d). Documentation shall be kept for a period of not less than five years.

(iv) For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under R309-210-5(4). Documentation shall be kept for a period of not less than five years.

(v) For systems, including wholesale systems, that are required to perform compliance monitoring under R309-215-16(3)(b):

(A) Records of the Executive Secretary-specified minimum disinfectant residual. Documentation shall be kept for a period of not less than ten years.

(B) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the Executive Secretary-prescribed minimum residual disinfectant concentration for a period of more than four hours. Documentation shall be kept for a period of not less

than five years.

(C) Records of Executive Secretary-specified compliance requirements for membrane filtration and of parameters specified by the Executive Secretary for Executive Secretary-approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours. Documentation shall be kept for a period of not less than five years.

KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations

September 21, 2010

19-4-104

Notice of Continuation March 22, 2010

63G-4-202

R325. Fair Corporation (Utah State), Administration.**R325-1. Utah State Fair Competitive Exhibitor Rules.****R325-1-1. Exhibitors' Requirements and Guidelines.**

Utah State Fair competitive exhibitors shall comply with the terms of the Exhibitor Entry Form, which constitutes a contract between the Utah State Fair Corporation and the exhibitor. For further guidelines, Exhibitors should refer to the exhibitor handbook which will be mailed to livestock and other department exhibitors for each year's fair, to other potential exhibitors upon request and will be available in Fair office after July 15th.

R325-1-2. Entry Form and Charge.

The exhibitor shall complete the entry form provided by the fair administration when entering exhibit items or animals in the fair. The exhibitor entry form may be photocopied for submission, however, the form may not be retyped or reproduced in any other manner. The exhibitor shall pay an entry charge which will be published in the exhibitor handbook. The entry form and charge must be submitted by dates published in the exhibitor handbook. The filing of a signed entry form by the exhibitor constitutes his acceptance of fair department rules and his eligibility for premium prize awards offered by the Utah State Fair Corporation.

R325-1-3. Claim Checks.

When an exhibitor in creative arts, home arts, floriculture, fine arts and photography enters exhibits at the fair, the department supervisor shall place entry tags on the exhibits and claim checks shall be furnished to the exhibitor. At the close of the fair, on published release dates, the claim check shall be furnished to the fair by the exhibitor for reclaiming his item. The exhibitor at the time of exhibit release shall sign his entry form. The fair department exhibit supervisor shall also furnish a release permit to the exhibitor which will be checked by a security officer at the entrance gate. Those items entered in the floriculture (015), horticulture (011), and agriculture (012) departments shall become property of the Utah State Fair and will not be returned to exhibitor unless prior approval has been made in writing with the supervisor.

R325-1-4. Adjudication of Objections.

(1) A person wishing to petition, object to, or complain about a decision by fair judge(s), the decision of a Fair administrator regarding the enforcement of contest or exhibitor rules, the exhibition of displays, damage to an exhibit, or any other disagreement with fair personnel, shall submit a petition in writing to the fair coordinator or executive director, stating the exact reason for the complaint.

(2) The written complaint shall contain the following information:

(a) the petitioner's name, mailing address, daytime telephone number;

(b) a statement of the exact reason for the complaint and a description of any relief sought.

(3) The petitioner may also include a short statement of facts, reasons, and any appropriate legal authority in support of the written objection/complaint.

(4) The fair coordinator or executive director shall consider the objection/complaint and, if necessary, act within a period of 30 days of its receipt.

(5) Any person aggrieved by a decision made by the director or a Fairpark administrator, may appeal that determination within 30 days, to the Fair Board of Directors by filing a notice of appeal, which shall include the information listed above, plus an explanation of, or reasons for making an appeal.

(6) Actions taken by the board of directors to adjudicate appeals shall be informal-proceedings, and shall be conducted

in accordance with Section 63G-4-203, Utah Code, of the Administrative Procedures Act.

R325-1-5. View of Forms.

Upon request, exhibitors may view the official entry forms and judges' forms in the administration office one month after the conclusion of State Fair.

R325-1-6. Request for New Categories.

Potential exhibitors requesting new categories or classes for inclusion in the exhibitor handbook shall submit, in writing, a request to the fair coordinator by January 1st. Final action on the request shall be taken by the executive director and/or the board of directors.

KEY: fairs, rules and procedures**August 19, 1999****Notice of Continuation June 22, 2006****9-4-1103**

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-101. Title.

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R359-1-102. 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.

R359-1-201. 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.

R359-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1). The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 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 R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

R359-1-301. 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, timekeeper, manager, contestant, second, referee, or judge.

(2) A licensed amateur MMA contestant shall not compete against a professional unarmed combat contestant, or receive a purse and/or other remuneration (other than for reimbursement for reasonable travel expenses, consistent with IRS guidelines).

(3) A licensed manager shall not hold a license as a referee or judge.

(4) A promoter shall not hold a license as a referee, judge, or contestant.

R359-1-302. 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.

R359-1-401. 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.

R359-1-402. 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 R359-1-404.

(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.

R359-1-403. 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.

R359-1-404. 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.

R359-1-405. 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.

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

(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 funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness. Payment for the attending physician(s) shall be made by the commission by the State of Utah.

(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 for each uninsured contestant and secondary insurance for each insured contestant 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 provide life insurance coverage of \$10,000 for each contestant in case of death.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) \$100 for a contest or event occurring in a venue of fewer than 200 attendees;

(ii) \$200 for a contest or event occurring in a venue of at least 200 attendees but fewer than 500 attendees;

(iii) \$300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iv) \$400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(v) \$600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(vi) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(viii) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

- (ii) attraction of the optimum number of spectators;
- (iii) costs of promoting and producing the contest or exhibition;
- (iv) ticket pricing;
- (v) committed promotions and advertising of the contest or exhibition;
- (vi) rankings and quality of the contestants; and
- (vii) committed television and other media coverage of the contest or exhibition.
- (viii) contribution to a 501(c)(3) charitable organization.

R359-1-502. 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.

R359-1-503. 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.

R359-1-504. 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.

R359-1-505. 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.

R359-1-506. 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 R359-1-506 (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 R359-1-506 (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 R359-1-506 (4).

- (e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

- (f) Any drug identified on the 2008 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 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 R359-1-506 (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 Vanceril.

- (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 R359-1-506 (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 R359-1-403;

(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.

R359-1-507. 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.

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody 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 negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. 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.

R359-1-510. 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 weighted 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.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required to be in attendance, or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(e) The promoter may select the event announcer.

(2) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(3) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(4) All ring officials assigned and directed by the Commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total

fees set by the Commission for all officials whom the Commission directs to officiate in a contest or exhibition promoted by the promoter.

(7) Event Officials' Minimum Fee Schedule:

TABLE				
EVENT ATTENDANCE	REFEREE	JUDGE	TIMEKEEPER	PHYSICIAN
0 - 500	\$50.00	\$35.00	\$35.00	\$300.00
501 - 4000	\$100.00	\$50.00	\$50.00	\$350.00
4001 - 10000	\$200.00	\$100.00	\$100.00	\$400.00
10001 AND ABOVE	\$400.00	\$200.00	\$200.00	\$500.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

R359-1-512. 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.

R359-1-513. Timekeeper.

(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.

R359-1-514. 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.

R359-1-601. 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.

R359-1-602. 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.

R359-1-603. 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.

R359-1-604. 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.

R359-1-605. 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.

R359-1-606. 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.

R359-1-607. 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.

R359-1-608. 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.

R359-1-609. 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.

R359-1-610. 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.

R359-1-611. 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.

R359-1-612. 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.

R359-1-613. 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 R359-1-613(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.

R359-1-614. 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

R359-1-615. 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.

R359-1-616. 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.

R359-1-617. 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.

R359-1-618. 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.

R359-1-619. 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 R359-1-609(6) and R359-1-608(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.

R359-1-620. 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.

R359-1-621. 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.

R359-1-622. 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 R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(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.

R359-1-623. 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.

R359-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 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 R359-1.

R359-1-702. 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 R359-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R359-1-801. 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 R359-1 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 R359-1.

R359-1-802. Martial Arts Contest Weights and Classes.

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs. (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

- (i) super heavyweight is over 265 lbs. (120.45 kgs.).

R359-1-901. "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.

R359-1-1001. 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.

R359-1-1002. 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.

R359-1-1003. 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.

R359-1-1004. 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

October 1, 2010

63C-11-101 et seq.

Notice of Continuation May 10, 2007

R432. Health, Health Systems Improvement, Licensing.**R432-550. Birthing Centers.****R432-550-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers shall consist of at least two, but not more than five birthing rooms.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful prenatal screening for potential problems throughout pregnancy.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated pregnancy, labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during pregnancy, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during pregnancy, childbirth and recovery.

(d) "Clinical staff" means the physicians, certified nurse-midwives and other licensed health care practitioners appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

R432-550-5. Licensure.

License Required. See R432-2.

R432-550-6. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-7. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body.

(2) The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Sections 13-7-1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual,

conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) notify the licensing agency in writing no later than five days after a change of administrator, identifying the name of the new administrator and the effective date of the change;

(i) appoint members of the clinical staff and delineate their clinical privileges;

(j) review and approve at least annually a quality assurance program for birthing center operation and patient care provided. R432-550-12.

(k) establish a system for financial management and accountability;

(l) provide for resources and equipment to provide a safe working environment for personnel;

(m) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(n) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-12.

(3) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of pregnancy, labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center;

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the benefits, risks and eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing for the education of patients, family and support persons in postpartum and newborn care;

(vii) planning for post-discharge follow-up of patients;

(viii) registering birth, fetal death or death certificates in accordance with Sections 26-2-5, 26-2-13, 26-2-14, 26-2-23 and rules promulgated pursuant thereto in R436.

(ix) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-7, Special Measures for the Control of Ophthalmia Neonatorum;

(x) performing phenylketonuria (PKU) and other metabolic disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 26-10-6;

(xi) providing for prenatal laboratory screening:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella;

(E) syphilis;

(F) urine glucose and protein.

(xii) providing for infection control to include housekeeping; cleaning, sterilization, sanitization and storage of supplies and equipment; and prevention of transmission of infection in personnel, patients and visitors.

R432-550-8. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority;

(f) review and act on incident or accident reports.

R432-550-9. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises when patients are in the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff;

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-10. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment;

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method shall be done annually or at the time of exposure and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(8) The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.

(a) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.

(b) The in-service training program shall define the frequency and content of training to include:

(i) an annual review of facility policies and procedures;

(ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(c) Personnel shall have ready access to the facility's policy and procedure manuals when on duty.

(9) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-11. Contracts and Agreements.

(1) The licensee shall secure a written contract or agreement for services not provided directly by the facility.

Contracts or agreements shall include a statement that contract personnel shall:

- (a) perform according to facility policies and procedures;
 - (b) conform to standards required by laws, rules and regulations;
 - (c) provide services that meet professional standards and are timely.
- (2) Contracts or transfer agreements shall be available for Department review.
- (3) The licensee shall maintain transfer agreements for one or both of the following:
- (a) admitting privileges for clinical staff at a general hospital within 30 minutes travel distance of the birthing center;
 - (b) a written transfer agreement with one or more general hospitals located within 30 minutes travel distance of the birthing center.
- (4) The general hospital transfer agreement shall include provisions for:
- (a) transfer of information needed for proper care and treatment of the individual transferred;
 - (b) security and accountability of the personal effects of the individual being transferred.

R432-550-12. Quality Assurance.

- (1) The administrator shall establish a program to ensure quality in the operation of the birthing center and the services provided.
- (2) The quality assurance program shall include a written organizational plan to identify and resolve problems.
- (3) The quality of services offered by the facility shall be monitored by a quality assurance committee:
 - (a) The quality assurance committee shall include at least representatives from facility administration and clinical services and a knowledgeable person who is not an owner or employee of the birthing center.
 - (b) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.
 - (c) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the governing body and with the administrator and clinical director as necessary to produce desired results.
- (4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-13. Emergency and Disaster.

- (1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.
- (2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101-31-4, Life Safety Code 1991.
- (3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.
- (4) Personnel shall have ready access to written emergency and disaster plans when on duty.
- (5) The administrator shall review the disaster plan with local disaster agencies as appropriate.
- (6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 31-4.4 of the Life Safety Code, 1991 edition.

R432-550-14. Patients' Rights.

Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

- (1) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;
- (2) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;
- (3) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;
- (4) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;
- (5) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;
- (6) to refuse to participate in experimental research;
- (7) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;
- (8) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-15. Clinical Staff and Personnel.

- (1) A physician applying for privileges at the birthing center must maintain admitting privileges at a general hospital within 30 minutes travel distance of the birthing center.
- (2) A certified nurse-midwife applying for privileges must provide evidence of, and maintain, a collaborative relationship with a back-up physician to include at least a written and signed agreement approved by the clinical director. Written agreements a certified nurse-midwife establishes with a back-up physician shall include at least the following:
 - (a) documentation that the back-up physician agrees to accept consultation calls and referrals from the certified nurse-midwife 24 hours a day;
 - (b) documentation that the back-up physician has admitting privileges at a general acute hospital within 30 minutes travel distance of the birthing center;
 - (c) provisions to ensure adequate and timely services by the back-up physician.
- (3) Information identifying current clinical staff, back-up physicians and on-call and emergency telephone numbers shall be readily available to birthing center personnel.
- (4) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.
- (5) A physician or certified nurse-midwife shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.
- (6) A second employee who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.
- (7) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-16. Clinical Staff.

- (1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.
- (2) Each patient shall be under the care of a member of the clinical staff.
- (3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-17. Nursing Services.

(1) The birthing center shall provide nursing care services to meet the needs of the patients served.

(2) Licensed nursing service personnel shall plan and deliver nursing care as defined in written facility policy and in accordance with Title 58, Chapters 31b and 44a; and R156-31b and R156-44a; and other applicable laws and rules.

(3) The administrator shall employ sufficient licensed and auxiliary nursing staff to meet the total nursing needs of the patients.

R432-550-18. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

- (a) furnishings suitable for labor, birth and recovery;
- (b) oxygen with flow meters and masks or equivalent;
- (c) mechanical suction and bulb suction;
- (d) resuscitation equipment to include resuscitation bags, laryngoscopes, endotracheal tubes and oral airways;
- (e) firm surfaces suitable for use in resuscitating patients;
- (f) emergency medications, intravenous fluids and related supplies and equipment;
- (g) fetal monitoring equipment, minimally to include a fetoscope or dopitone;
- (h) equipment to monitor and maintain the optimum body temperature of the newborn;
- (i) a clock indicating hours, minutes and seconds;
- (j) sterile suturing equipment and supplies;
- (k) adjustable examination light;
- (l) infant scale;
- (m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies;
- (n) a delivery log for recording birth data.

R432-550-19. Pharmacy Service.

(1) The administrator shall provide documentation that facility pharmacy services comply with R156-17a, Board of Pharmacy Rules; Section 58-17a, Pharmacy Practice Act; Section 58-37, Controlled Substances Act; and with other applicable state and federal laws, rules and regulations.

(2) Licensed personnel shall prescribe order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-20. Anesthesia Services.

(1) The birthing center shall provide facilities and

equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(a) Protocols for administration of anesthesia by a certified nurse-midwife shall be in accordance with R156-44a-102 and R156-44a-601.

(b) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-21. Laboratory and Radiology Services.

(1) The birthing center shall provide direct or contract laboratory, radiology and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory and radiology reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided by a CLIA approved laboratory which meets requirements of R432-100-22. In-house laboratory facilities shall meet the requirements for laboratories in the construction portion of this rule.

(4) Radiology services shall comply with applicable sections of R313-16 Radiation Control and R432-100-21.

R432-550-22. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

- (a) admission record with demographic information and patient identification data;
- (b) history and physical examination which shall be up-to-date upon the patient's admission;
- (c) written and signed informed consent;
- (d) orders by a clinical staff member;
- (e) record of assessments, plan of care and services provided;
- (f) record of medications and treatments administered;
- (g) laboratory and radiology reports;
- (h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;
- (i) prenatal care record containing at least prenatal blood

serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

- (j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;
- (k) fetal monitoring record;
- (l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any;
- (m) record of administration of Rh immune globulin;
- (n) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

- (a) date and hour of birth, birth weight and length, period of gestation, sex and condition of infant on delivery including Apgar scores and resuscitative measures;
- (b) mother's name or unique identification;
- (c) record of ophthalmic prophylaxis;
- (d) identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening was done and the genetic screening, PKU or other metabolic disorders report.

R432-550-23. Housekeeping Services.

- (1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.
- (2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-24. Laundry Services.

- (1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.
- (2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair and shall not be threadbare.
- (3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-25. Maintenance, Physical Environment, and Safety.

- (1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.
- (2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-26. General Maintenance.

- (1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.
- (2) The facility shall provide a safe, clean and sanitary environment.
- (3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.
- (4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.
- (5) Documentation shall be maintained for Department review.

R432-550-27. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-28. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-29. Limitations of Services.

(1) Birthing center maternal patients shall be limited to women initially determined to be at low maternity risk and evaluated regularly throughout pregnancy to ensure they remain at low risk for a poor pregnancy outcome.

(2) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(3) A clinical staff member shall perform and document a risk assessment for each maternal patient, which shall include evaluating the maternal patient for the criteria in R432-550-29(4) and facility policy.

(4) In order to be given care in a birth center a patient shall exhibit no evidence of the following:

- (a) severe anemia or blood dyscrasia;
- (b) insulin dependent diabetes mellitus;
- (c) symptomatic cardiovascular disease, including active thrombophlebitis;
- (d) compromised renal function;
- (e) substance abuse;
- (f) pregnancy-induced hypertension to include moderate to severe hypertension, preeclampsia and toxemia;
- (g) known or suspected active herpes genitalis;
- (h) viral infections during pregnancy known to adversely affect fetal well-being;
- (i) previous caesarean section, major uterine wall surgery or obstetrical complications likely to recur;
- (j) multiple gestation;
- (k) pre-term labor (37 weeks or less) or post-term gestation (43 weeks or greater);
- (l) prolonged rupture of membranes;
- (m) intrauterine growth retardation or macrosomia;
- (n) suspected serious congenital anomaly;
- (o) fetal presentation other than vertex;
- (p) oligohydramnios, polyhydramnios or chorioamnionitis;
- (q) abruptio placenta or placenta previa;
- (r) fetal distress which will be likely to adversely affect the infant in labor or at birth, including moderate to heavy meconium stained amniotic fluid;
- (s) need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols;
- (t) a desire for transfer from birthing center care;
- (u) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

September 15, 2010

Notice of Continuation October 4, 2007

26-21-5

26-21-16

R434. Health, Health Systems Improvement, Primary Care and Rural Health.**R434-100. Physician Visa Waivers.****R434-100-1. Authority and Purpose.**

(1) Sections 1182(e) and 1184 of Title III of the Immigration and Nationality Act and 22 CFR 41.63 provide that the state may request a waiver of the federal two year home residence requirement on behalf of J-1 visa physicians each fiscal year if they work in a medically underserved area of the state and if the waiver is in the public interest. Section 26-1-18 authorizes the Utah Department of Health to implement this program.

(2) This rule establishes the criteria to determine whether it is in the public interest to request a J-1 visa waiver for an applicant. It establishes the procedures for the submission, review, and disposition of applications.

R434-100-2. Definitions.

As used in this rule:

- (1) "Department" means the Utah Department of Health.
- (2) "Health care facility" means a doctor's office, local health department, clinic or licensed health care facility where a J-1 visa waiver physician may work under the supervision of the sponsoring physician.
- (3) "Primary care physician" means a physician who specializes in general internal medicine, family medicine, general pediatrics, obstetrics and gynecology, or psychiatry.
- (4) "Principal" means any person who owns 10% or more beneficial or equitable interest in the health care facility.
- (5) "Subspecialty care physician" means a physician who specializes in a specialty other than general internal medicine, family medicine, general pediatrics, obstetrics and gynecology, or psychiatry.

R434-100-3. Maximum Number of Visa Waivers.

(1) The Department may recommend J-1 visa waivers up to the maximum number of eligible J-1 visa waivers that have been granted in a federal fiscal year. If the maximum number of J-1 visa waivers have been granted, the Department shall consider pending applications in the following federal fiscal year in the order each was received.

(2) Each health care facility may make up to two requests per federal fiscal year.

R434-100-4. Physician Eligibility.

A physician is eligible to apply for a J-1 visa waiver recommendation if he:

- (1) is enrolled in or has completed a minimum three year postgraduate training program in the United States accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education prior to submitting an application;
- (2) has passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to rule established by the Division of Occupational and Professional Licensing; and
- (3) has the specialty training and previous work experience that corresponds to the health care facility's recruitment descriptions.

R434-100-5. Requests.

The health care facility or the physician must submit to the Department a written request for the J-1 visa waiver.

- (1) The request must include from the health care facility:
 - (a) the specialty of physician that the facility has been unable to recruit;
 - (b) documentation of its recruitment efforts to hire a qualified United States citizen for at least one immediate prior year for the position the J-1 visa waiver physician seeks to fill;

(c) documentation that it implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients; and

(d) an assurance letter that the health care facility and its principals are not under investigation for, under probation for, or under restriction for:

- (i) Children's Health Insurance Program, Medicaid, or Medicare fraud;
- (ii) violations of Division of Occupational and Professional Licensing statute or rules; or
- (iii) other violations of law that may indicate that it may not be in the public interest that a waiver of the two-year home residency requirement be granted.

(2) The request must include from the physician:

- (a) a completed application that includes all professional experience, education, licenses and certificates, specialty or specialties, research, honors, professional memberships, and three professional references;
 - (b) a copy of all IAP-66 forms "Certificate of Eligibility for Exchange Visitor (J-1) Status" and INS forms I-94 for the physician and his or her spouse and children; and
 - (c) the case number issued by the United States Department of State indicating payment of the federal fee required to apply for the visa waiver.
- (3) The request must also include:
- (a) a copy of the complete contract between the J-1 visa waiver physician and the health care facility;
 - (b) any required processing fees; and
 - (c) other information requested by the Department as may be reasonably necessary to determine whether it is in the public interest that a waiver of the two-year home residency requirement be granted.

R434-100-6. Contract Requirements.

To obtain a state recommendation that the visa waiver is in the public interest, the contract that the applicant submits must meet the following criteria:

- (1) The contract must be for employment at a health care facility:
 - (a) to work as a primary care physician located within a federally designated primary care Health Professional Shortage Area or to work as a subspecialty care physician serving medically needy population;
 - (b) that has been operating for at least one year;
 - (c) whose principals are free from default on any federal or state scholarship or loan repayment program offered by the National Health Service Corps or by the state under Title 26, Chapter 46;
 - (d) that it or its principals are not under investigation for, under probation for, or under restriction for:
 - (i) Medicaid or Medicare fraud;
 - (ii) violations of Division of Occupational and Professional Licensing statute or rules; or
 - (iii) other violations of law that may indicate that it may not be in the public interest that a waiver of the two-year home residency requirement be granted.
 - (e) that accepts all Medicaid, Medicare, Children's Health Insurance Program, Primary Care Network and Utah Medical Assistance Program eligible patients; and
 - (f) that implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients.
- (2) The contract must provide:
 - (a) that the physician agrees to meet the requirements set forth in section 214(k) of the Immigration and Nationality Act, 8 USC 1184(k);
 - (b) the specific address of the health care facility where the physician will practice medicine;
 - (c) a description of the geographic area that will be served

by the physician;

(d) that the physician agrees to work an annual full-time equivalency of 40 hours in patient care per week;

(e) for an obligation committing both parties to three years of employment; and

(f) that the physician agrees to begin employment at the health care facility within ninety (90) days of the waiver being granted;

(3) The contract shall not contain a "non competition" clause or other provision that would discourage or inhibit the physician from working anywhere in the state upon termination of his employment with the health care facility.

R434-100-7. Application Deferral.

(1) The Department may defer processing of a request if the health care facility or any of its principals is under investigation or awaiting trial for possible:

(a) Medicaid or Medicare fraud;

(b) violations of Division of Occupational and Professional Licensing statute or rules; or

(c) other violations of law that may indicate that it may not be in the public interest that a waiver of the two year home residency requirement be granted.

(2) The Department may defer processing of a request if the health care facility or any of its principals is under probation or has entered a plea in abeyance for any alleged violation of the elements listed in subsection (1).

(3) A physician applicant may seek to obtain a J-1 visa waiver as an employee of another health care facility if the Department has deferred processing of a request under subsections (1) or (2).

(4) If a health care facility for which a request has been deferred desires the Department to remove the deferral, it must notify the Department and provide documentation that the reason for the deferral no longer exists.

R434-100-8. Program Improvement.

The Department may require the health care facility and J-1 visa waiver physician to provide information regarding the performance, commitment to the medically underserved area, service obligation fulfillment, and any other information regarding their experience under the J-1 visa waiver as is reasonably necessary for the administration of the program.

KEY: waivers, underserved, physicians

September 30, 2008

26-1-18

Notice of Continuation September 30, 2010

R497. Human Services, Administration, Administrative Hearings.**R497-100. Adjudicative Proceedings.****R497-100-1. Authority.**

The Department of Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to Utah Code Ann. Section 62A-1-111.

R497-100-2. Definitions.

The terms used in this rule are defined in Section 63G-4-103. In addition,

(1) For the purpose of this section, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are stated in R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of abuse, neglect and dependency pursuant to Section 62A-4a-1009;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section 62A-4a-206;

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;

(e) challenges to findings of abuse, neglect or exploitation of a disabled or elder adult pursuant to Section 62A-3-301, et seq.;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any Juvenile Justice Services facility or institution;

(h) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(i) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(j) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Sections 62A-5-313;

(k) protective payee hearings;

(l) Department records amendment hearings held pursuant to Section 63G-3-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Office" means the Office of Administrative Hearings

in the Department of Human Services.

(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;

(b) administrative law judges;

(c) division and office directors;

(d) the superintendent of agency institutions;

(e) statutorily created boards or committees.

R497-100-3. Exceptions.

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Section 63G-4-102(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

R497-100-4. Form of Proceeding.

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63G-4-102, et seq. shall apply. In all other cases, the Procedures for Informal Proceedings in R497-100-6 shall apply.

R497-100-5. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Section 63G-4-201(2)(a) and shall also include:

(i) a statement that the adjudicative proceeding is to be conducted informally;

(ii) if a hearing is to be held in an informal adjudicative proceeding, 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; and

(iii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action.

(b) The notice of agency action shall be mailed or published in conformance with Section 63G-4-201(2)(b).

(c) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Section 63G-4-201(3)(a) and (b) and include the name of the adjudicative proceeding, if known.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the

presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

- (i) give the agency's file number or other reference number;
- (ii) give the name of the proceeding;
- (iii) designate that the proceeding is to be conducted informally;
- (iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;
- (v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and
- (vi) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-6. Availability of Hearing.

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

- (a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;
- (b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-7. Procedures for Informal Proceedings.

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63G-4-203.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time

prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Section 63G-4-203(1)(i).

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

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

(2) All hearings shall be recorded at the office's expense. A transcript of the record may be prepared pursuant to Section 63G-4-203(2)(b). The recording will be maintained for one year after the order has been issued.

R497-100-8. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

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

(ii) a detailed description of the situation or circumstances at issue;

(iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;

(iv) an address and telephone where the petitioner can be contacted during regular work days;

(v) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by any agency of the Department under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with Sections 63G-4-203(1)(g) and 63G-4-503.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to

intervene if the petition meets the following requirements:

(i) the intervenor's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Section 63G-4-503(6)(a);

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Section 63G-4-503(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of all declaratory orders shall be mailed in accordance with Section 63G-4-503(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

R497-100-9. Agency Review.

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.

R497-100-10. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedures, social services

January 21, 2009 62A-1-110

Notice of Continuation September 15, 2010 62A-1-111

R512. Human Services, Child and Family Services.**R512-1. Description of Division Services, Eligibility, and Service Access.****R512-1-1. Purpose and Authority.**

(1) The purpose of this rule is to clarify the scope of services the Division of Child and Family Services (Child and Family Services) provides to families in Utah.

(2) This rule is authorized by Section 62A-4a-102.

R512-1-2. Introduction.

(1) Pursuant to Sections 62A-4a-103 and 62A-4a-105, Child and Family Services is authorized to provide programs and services which support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

(2) Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the assisting of youth who are ungovernable or who are runaways. Domestic violence services shall be made available to assist adult victims who have been abused or threatened by their partners.

(3) Child and Family Services shall provide protective services, services given in the family home, short-term temporary crisis placement services, out-of-home placement, and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by Child and Family Services.

(4) The programs administered by Child and Family Services have been established to help children remain with their families, to solve problems in their homes, and, if that is not possible, to place them in out-of-home care for as short a time as possible. When Child and Family Services finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to insure a permanent family for the child. Domestic violence services shall provide comprehensive assistance to adult victims of domestic violence, their dependent children, and in some cases, to the abusive partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

(5) Child and Family Services shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services and also on Child and Family Services' website.

(6) The State Office of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include:

- (a) Program planning,
- (b) Practice guideline development,
- (c) Training and consultation,
- (d) Program financing,
- (e) Administration of the Interstate Compact on Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA),
- (f) Legislative and federal liaison, and
- (g) Information and referral.

R512-1-3. Prevention Services.

Child and Family Services will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Trust Account legislation.

R512-1-4. Intervention Services.

(1) Protective Services. Child abuse and neglect

investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be screened for assessment and/or investigation in accordance with the provisions of Section 62A-4a-409. Child and Family Services' caseworkers recognize that parents have the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline their children. They also recognize that removal affects these rights, creating a long-term impact on children. Child and Family Services' caseworkers are dedicated to maintaining children with their family when circumstances and services can make it safe for the children to remain home. Child and Family Services will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in crisis placements may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in a crisis placement will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in a crisis placement, staff will arrange, as appropriate, visits with the child at the location designated by staff. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

(a) Access. Investigations and/or assessments will be conducted using all appropriate referrals of alleged child abuse or neglect.

(b) Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

(2) Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families may be provided in order to stabilize the family.

(a) Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, ungovernable, or a runaway.

(b) Eligibility. Youth who are either homeless or ungovernable or who have run away shall be eligible.

R512-1-5. In-Home Services.

(1) In-Home Services. Child and Family Services may offer services to families whose children are in their own homes, yet who are at a risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in protective custody. These services may include:

- (a) Homemaker,
- (b) Child day care,
- (c) Day treatment for preschool children,
- (d) Treatment for children who have been sexually abused,
- (e) Protective supervision, and
- (f) Family preservation services.

(a) Access. Only families referred by Child and Family Services staff shall be provided these services.

(b) Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect. Clients receiving treatment for preschool children and sexual abuse treatment may be required to pay a fee based on the family's ability to pay. Fees shall be calculated as a percentage of family income up to the total cost of the service. Clients receiving child care as a protective service shall not be assessed a fee; however, if the family is receiving child care and paying a fee prior to protective services, they will continue to pay day care fees.

(2) Custody Studies. Upon an order of the District Court, Child and Family Services may engage in and complete child custody studies.

(a) Access. Access shall be authorized by receipt of a District Court Order.

(b) Eligibility. A District Court Order will provide

eligibility. The parties to the action shall be assessed a fee based upon income. Fees shall be determined from the Department fee schedule #1 for low income families. A separate fee schedule shall provide for parents to pay up to the total cost of the study based upon income for families above 150% of the median income.

(3) Domestic Violence Services. For adult victims of domestic violence and their minor children, shelter care facilities may be provided in order to protect the adult victim and their children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services may be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused partners eligible for domestic violence services may receive child care without a fee as part of the protective services provided to the family.

(a) Access. The adult victim of family violence shall have access to the services listed above by requesting protection or by referral.

(b) Eligibility. The only eligibility factor is that the adult victim shall have been abused by their partner or some other member of the family. The perpetrator may be assessed, through court order, for the costs of Child and Family Services providing these services.

R512-1-6. Out-of-Home Care Services.

(1) The following definitions apply to this section:

(a) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(b) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(c) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

(2) Foster care and group care. Child placement services may be provided when parents are unable to meet their children's needs within the family. Child and Family Services has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the ICPC. The intent of foster care or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, guardianship, or individualized permanency services. A permanency plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the permanency plan, and to project a likely date for returning the child to the family home or to another permanent home arrangement. A dispositional hearing shall be held every 12 months from the date of placement to determine the future status of the child. Foster care shall be provided in licensed family homes. A foster parent or foster parents must complete a declaration of compliance with Section 78B-6-117 that they are not cohabiting with another person in a sexual relationship. Child and Family Services 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 custody of Child and Family Services may be foster parents. Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with Rule R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with Rule R501-19.

(a) Access. Referrals can be made from Child Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local Child and Family Services office. Referrals for foster care or group care may be screened to determine whether placement is the best option. In most cases, services which are intended to prevent placement must be first provided, before foster care or group care will be considered by Child and Family Services.

(b) Eligibility. Temporary child custody must be given to the state by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster care or group care until age 18, or until age 21 when ordered by the court.

(3) Transition to Adult Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age 14 and older shall be required to be working toward at least one objective in developing independent living skills in their permanency plans.

(a) Access. Access shall be given only by a referral from the foster care caseworker.

(b) Eligibility. Foster children who are at least 14 years old and who are in the custody of the state shall be eligible.

(4) Adoption. This service provides adoptive homes for children in custody of the state who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption.

(a) The choice of an adoptive home is based on the best interests of the child.

(b) Adults who are residents of Utah who wish to adopt a child in State custody in Utah may apply to the Utah Foster Care Foundation for consideration.

(c) Adults who are residents of other states who wish to adopt a child in State custody in Utah must meet the standards to adopt a child in their state custody as well as to comply with ICPC requirements.

(d) Children whose special needs make it more difficult to find appropriate adoptive homes may be eligible for adoption assistance that may include Medicaid and a monthly subsidy payment based on federal qualifying factors.

(e) To be eligible, the child must be in custody of the state and be legally freed for adoption, and the court must determine that adoption is the best permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval based on Rule R512-41-3-5. Authorization of adoption assistance for children with special needs shall be determined by Child and Family Services based on federal law.

(5) Provider Services. Persons applying to be foster care or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training which may be required for some types of care. Annual reapproval is required.

(a) Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as crisis placements, may apply at the Utah Foster Care Foundation.

(b) Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards before approval is granted.

R512-1-7. Collection of Fees.

Child and Family Services regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For

hardship situations, a fee reduction can be considered by the director of Child and Family Services.

R512-1-8. Civil Rights and Due Process.

Child and Family Services shall comply with the Department of Human Services policy of Civil Rights. Child and Family Services seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service which is requested and received through Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by Child and Family Services when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility

September 15, 2010

Notice of Continuation August 7, 2007

62A-4a-102

62A-4a-103

62A-4a-105

R512. Human Services, Child and Family Services.**R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living.****R512-2-1. Purpose and Authority.**

(1) The purpose of this rule is to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

(2) This rule is authorized by Section 62A-4a-102.

R512-2-2. Child Welfare/Family Preservation and Support Services.

(1) The Division of Child and Family Services (Child and Family Services) adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

(a) 42 USC 620, 621, 622, 623, 624, 625, 626, 629, 629a, 629b, 629c, 629d, 629e as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Parts 1355 and 1357 as updated through October 1, 2009, incorporated by reference.

R512-2-3. Title IV-E Foster Care, Adoption, and Independent Living.

(1) Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

(a) 42 USC 670, 671, 672, 673, 674, 675, 676, 677, and 679, as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Part 1356, as updated through October 1, 2009, incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility
September 15, 2010 **62A-4a-102**
Notice of Continuation August 7, 2007 **62A-4a-105**

R512. Human Services, Child and Family Services.**R512-11. Accommodation of Moral and Religious Beliefs and Culture.****R512-11-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures to accommodate the moral beliefs, religious beliefs, and culture of children and families served by the Division of Child and Family Services (Child and Family Services) according to Section 62A-4a-120.

(2) This rule is authorized by Section 62A-4a-102.

R512-11-2. Definitions.

(1) "Accommodate" means to adapt, adjust, or make provision to support.

(2) "Child and Family Assessment" means a document that is a collection of formal and informal assessments pertaining to the child and family identifying the strengths, resources, and needs of the family. The Child and Family Assessment is a working document used to record information, draw conclusions, and inform the Child and Family Plan.

(3) "Child and Family Plan" means the collective intentions of the Child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and parents, or guardians.

(4) "Child and Family Team" means a group that may consist of the child, the child's family, the Child and Family Services caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the Guardian ad Litem, the parents' attorney, the Attorney General, and other supportive individuals as designated by the family.

(5) "Culture" means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.

(6) "Moral beliefs" means ideas of what is right and what is wrong that shape one's outward behavior. Moral beliefs define what is decent and honorable.

(7) "Religious beliefs" means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

R512-11-3. Child and Family Services Responsibilities.

(1) Child and Family Services recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.

(2) When intervening with a family, Child and Family Services caseworkers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.

(3) Child and Family Services shall develop a Child and Family Team when engaging children and families.

(a) The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.

(b) The Child and Family Assessment shall document the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. It shall document the method that Child and Family Services will employ to make the accommodation or the reasons that such accommodation is not reasonable or proper. Accommodations shall be reflected in the Child and Family Plan.

(c) The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family Assessment and reflected in the services and provisions made in the Child and Family Plan. Any accommodation that cannot be provided shall

be explained to the child and family and noted in the Child and Family Plan.

(d) When Child and Family Services is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.

(e) The accommodations in the Child and Family Assessment and Child and Family Plan shall be periodically reviewed with the parents or caregivers, along with all other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the decisions made by the Child and Family Team.

(4) The planning and implementation of all other activities provided by Child and Family Services shall identify in the Child and Family Assessment and the Child and Family Plan aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method Child and Family Services employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

**KEY: child welfare
September 15, 2010**

62A-4a-102

62A-4a-105

62A-4a-106

62A-4a-120

R512. Human Services, Child and Family Services.**R512-41. Qualifying Adoptive Families and Adoption Placement.****R512-41-1. Purpose and Authority.**

(1) The purpose of this rule is to define the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a family or individual who completes Child and Family Services training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.

(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) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(e) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including kin or Child and Family Services employees, must meet all of the following requirements, pursuant to Rule R512-40:

(a) Complete the adoption training program approved by Child and Family Services;

(b) Be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;

(c) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;

(d) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-41-4. Adoption Evaluation Requirements.

(1) An adoption evaluation must be consistent with the standards of the Child Welfare League of America (the evaluation may be done by a licensed child placement agency or Child and Family Services) and must include the following:

(a) An autobiography or psychosocial information gathered from the prospective adoptive parent(s) and family members;

(b) A behavioral assessment of the prospective adoptive parent(s) and children living at home;

(c) A declaration that applicants are not cohabiting in a relationship that is not a legal marriage and are in compliance with Section 78B-6-117;

(d) A health status verification of the prospective adoptive parent(s) and children living at home;

(e) A verification of financial status;

(f) An assessment of home safety and health;

(g) A criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;

(h) A screening of all adults present in the home against

the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;

(i) An assessment of the prospective adoptive parent(s) parenting skills;

(k) Recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) In the matching process, the selection of the adoptive parent(s) will be in the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, the adoption committee should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(8) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

(9) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (January 3, 2007).

(10) Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.

R512-41-6. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court has freed the child for adoption.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The adoption committee is also responsible for recommending removal of the child from a placement.

(3) The adoption committee will consist of at least three members to include senior-level Child and Family Services staff

and one or more members from an outside agency with expertise in adoption or foster care.

(4) Anyone who has information regarding the child and the potential matching families may be invited by the adoption committee to present information but not to participate in the deliberations. The adoption committee will reach its decision through consensus. If consensus cannot be reached, the adoption committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the final decision.

(5) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

(6) Any member of the adoption committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(7) Child and Family Services will send written notification of selection to the adoptive parent(s).

(8) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

(9) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(10) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(11) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

(2) The adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform the adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.

(3) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

(4) Child and Family Services' supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the adoption committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.

(4) If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-10. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the adoption assistance committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78B-6-144.

KEY: child welfare, adoption

September 15, 2010

Notice of Continuation May 7, 2009

62A-4a-102

62A-4a-105

62A-4a-205.6

R512. Human Services, Child and Family Services.**R512-43. Adoption Assistance.****R512-43-1. Purpose and Authority.**

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were

made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-10. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal

adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount

that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of

threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 41 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 71 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(iii) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents

as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

- (a) Chairperson;
- (b) Clinical consultant or casework supervisor;
- (c) Regional budget officer or fiscal representative;
- (d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

- (a) Verification that a child qualifies for adoption assistance,
- (b) Approval for reimbursement of allowable, reasonable non-recurring costs,
- (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,
- (d) Approval of supplemental adoption assistance up to \$3,000,
- (e) Extension of adoption assistance up to age 21 for a qualifying child,
- (f) Renewal of adoption assistance, and
- (g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

- (a) The terms of the adoption assistance agreement are concluded.
- (b) The adoptive parents request termination.
- (c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.
- (d) The child dies.
- (e) The adoptive parents die.
- (f) The adoptive parents' legal responsibility for the child

ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

- (a) The adoption assistance application is denied;
- (b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a

subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care

September 15, 2010

62A-4a-102

Notice of Continuation January 3, 2007

62A-4a-106

62A-4a-901 through 62-4a-907

R512. Human Services, Child and Family Services.**R512-75. Rules Governing Adjudication of Consumer Complaints.****R512-75-1. Introductory Provisions.**

(1) Purpose and Authority.

(a) The purpose of this rule is to define consumer complaint procedures, intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(b) This rule is authorized by Section 62A-4a-102.

(2) Definitions.

(a) The definitions contained in Section 63G-4-103 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within Child and Family Services' appropriation authority" means those expenditures that fall within Child and Family Services' budgetary parameters.

(ii) "Aggrieved Person" or "Complainant" means any person who is alleged to have been adversely affected by an act or omission of Child and Family Services or its employees.

(iii) "Child and Family Services" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

(iv) The "Department" means the Department of Human Services.

(v) The "Director" means the Director of Child and Family Services.

(vi) "Office of the Child Protection Ombudsman" means the office, separate from Child and Family Services, designated by the Department to investigate a consumer complaint regarding Child and Family Services.

(vii) "Ombudsman Service Review Analyst" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(viii) "Reasonable time" means the time specified in the action plan.

R512-75-2. Procedures for Filing an Initial Informal Non-adjudicative Complaint With Child and Family Services.

(1) An aggrieved person shall first make a reasonable attempt to resolve a complaint with a caseworker and the caseworker's supervisor. If resolution is not reached, a complaint may be filed with the regional office.

(2) If there is a filing of an initial complaint with a regional office:

(a) The complainant or aggrieved person shall make a complaint within six months from the date of the alleged circumstances giving rise to the complaint. A complaint may be made in any form.

(b) Each complaint shall:

(i) include the aggrieved person's name, address, and phone number;

(ii) describe Child and Family Services' alleged act or omission in sufficient detail to inform Child and Family Services of the nature and date of the alleged event.

(iii) describe the action desired; and

(c) The complaint shall be provided to the Child and Family Services regional designee. The region shall have ten working days from the date of the filing of the complaint to submit a response to the complaint.

(3) Investigation of the Complaint by the Regional Office.

(a) Complaints received by Child and Family Services' Constituent Services Office will be forwarded to the regional office or appropriate Child and Family Services staff to address the complaint. The regional office or state specialist will contact the complainant and address the complaint. The Child and Family Services regional office or Child and Family Services staff may hold meetings of the concerned parties. The review shall be conducted to the extent necessary to assure that

all relevant facts are reviewed. If the complaint is resolved no further action is necessary.

(b) Within 20 calendar days of receiving the complaint, the regional office or Child and Family Services staff shall issue a written decision to the Child and Family Services Constituent Services Office, setting forth its action plan to address the complaint.

(c) If a complaint filed with a regional office is not adequately addressed, the complaint shall be forwarded to the Child and Family Services Constituent Services Office.

(d) A complaint filed with the Child and Family Services Constituent Services Office that is not resolved to the satisfaction of the complainant shall be forwarded to the Office of the Child Protection Ombudsman. Child and Family Services shall immediately notify the aggrieved person in writing that the complaint is being forwarded to the Office of Child Protection Ombudsman. Child and Family Services will forward copies of all correspondence regarding the steps taken by Child and Family Services to address the complaint to the Office of Child Protection Ombudsman.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if Child and Family Services is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman according to the requirements of R515-1, Processing Complaints Regarding the Utah Division of Child and Family Services.

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) Once the Office of the Child Protection Ombudsman completes an investigation according to the provisions of R515-1 and if recommendations are made to Child and Family Services, Child and Family Services has ten calendar days to agree with the recommendations.

(2) If Child and Family Services does not agree with the recommendation, Child and Family Services may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within ten calendar days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director and request that the recommendations be amended.

KEY: consumer hearing panel, grievance procedures**September 15, 2010****62A-4a-102****Notice of Continuation December 2, 2009****63G-2-304****63G-2-305****63G-2-603****63G-4 et seq.**

R590. Insurance, Administration.**R590-130. Rules Governing Advertisements of Insurance.****R590-130-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-23a-402, which authorizes the commissioner to define unfair or deceptive acts or practices in the business of insurance.

R590-130-2. Purpose.

This rule is designed to help assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as insurance. This is intended to be accomplished by the establishment of guidelines and standards of conduct in the advertising of insurance in a manner which prevents unfair, deceptive and misleading advertising and which is conducive to accurate presentation and description to the insurance buying public through the advertising media and material used by insurance producers and companies.

R590-130-3. Applicability.

A. This rule shall apply to any insurance "advertisement" as that term is defined herein unless otherwise specified in these rules, which the licensee knows or reasonably should know is intended for presentation, distribution or dissemination in this state when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer or producer, as those terms are defined in the Insurance Code of this state.

B. Advertising materials reproduced in quantity shall be identified by form numbers or other identifying means. Such identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications or other materials used by the insurer or advertiser.

R590-130-4. Definitions.

A. (1) An "Advertisement" for the purpose of this rule shall include:

(a) printed and published material, audio or visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards and similar displays; and

(b) prepared sales talks, presentations and material for use by producers and solicitors whether prepared by the insurer or the producer or solicitor, when used for members of the insurance buying public, whether mailed or delivered in person.

(2) The definition of advertisement includes promotional material included with a policy when the policy is delivered as well as material used in the solicitation of renewals and reinstatements.

B. "Institutional Advertisement" for the purpose of this rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of insurance, or the promotion of the insurer as a seller of insurance.

C. "Invitation to Contract" for the purpose of this rule shall mean an advertisement regarding a specific insurance product and which describes one or more of the provisions of the contract for that product.

D. "Invitation to Inquire" for the purpose of this rule shall mean an advertisement having as its objective the creation of a desire to inquire further about insurance and which is limited to a brief description of coverage, and which shall contain a provision in the following or substantially similar form:

"This policy has (exclusions) (limitations) (reduction of benefits) (terms under which the policy may be continued in force or discontinued). For costs and complete detail of the coverage, call (or write) your insurance agent or the company (whichever is applicable)."

E. "Preneed funeral contract" shall mean an agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services, which is funded, at least in part, by insurance.

R590-130-5. Method of Disclosure of Required Information.

All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it may not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

R590-130-6. Form and Content of Advertisements.

A. The format and content of an insurance advertisement shall be sufficiently complete and clear to avoid deceiving or misleading the reader, viewer, or listener. Whether an advertisement is misleading or deceiving shall be determined from the overall impression that the advertisement may reasonably be expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

B. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used without a clear explanation of such words or phrases.

C. An insurer must clearly identify its insurance policy as an insurance policy. A policy trade name must be followed by the words "Insurance Policy" or similar words clearly identifying the fact that an insurance policy or, in the case of health maintenance organizations, prepaid health plans and other direct service organizations, a health benefits product is being offered.

D. No insurer, producer, solicitor or other person may solicit residents of this state for the purchase of insurance through the use of a name that is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of such person, or the true purpose of the advertisement.

R590-130-7. Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

A. Deceptive Words, Phrases or Illustrations Prohibited:

(1) No advertisement may omit information, or use words, phrases, statements, references or illustrations if the omission of such information, or use of such words, phrases, statements, references or illustrations has the effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not negate this requirement.

(2) No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help fill some of the gaps that Medicare and your present insurance leave out," "the policy will help to replace your income" (when used to express loss of time benefits), or similar words and phrases, in a manner which exaggerates the extent of any policy benefit when the policy is viewed as a whole.

(3) An advertisement which also is an invitation to join an association, trust or discretionary group must solicit insurance coverage on a separate and distinct application which requires separate signatures for each application. The separate and

distinct applications required shall be on separate documents. The insurance program must be presented so as to disclose to the prospective members that they are purchasing insurance as well as applying for membership, if that is the case. Refundability of a membership fee must be fully disclosed, as well as the complete identity of the underwriter.

(4) An advertisement may not contain descriptions of policy limitations, exceptions or reductions, worded in a positive manner to imply that it is a benefit such as describing a waiting period as a "benefit builder" or stating "even preexisting conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

(5) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility may use words or phrases such as "tax-free," "extra cash," "extra income," "extra pay," or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

(6) No advertisement of confinement indemnity benefits shall advertise weekly or monthly benefits without also, with equal prominence, explaining that these benefits are based upon an accumulated daily pro rata benefit, if that is in fact the case.

(7) No advertisement of a policy covering only one disease or a list of specified diseases may imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease so as to imply broader coverage than is the fact.

(8) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY," "THIS IS A CANCER ONLY POLICY," or "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY."

(9) An advertisement for the solicitation or sale of a preneed funeral contract, which is funded or to be funded by a life insurance policy or annuity contract, shall adequately disclose the fact that a life insurance policy or annuity contract is involved or being used to fund such arrangement.

(10) An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

B. Exceptions, Reductions and Limitations

(1) An advertisement which is an invitation to contract shall disclose those exceptions, reductions and limitations affecting the basic provisions of the policy.

(2) When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or at a time period between the date of loss and the date benefits begin to accrue for such loss, an advertisement which is an invitation to contract shall disclose the existence of such periods.

(3) An advertisement may not use the words "only" "just," "merely," "minimum," "necessary" or similar words or phrases to describe the applicability of any exceptions, reductions, limitations or exclusions in any way so as to minimize the apparent effect of such exceptions, reductions, limitations, or exclusions.

C. Preexisting Conditions:

(1) An advertisement which is an invitation to contract shall, in negative terms, disclose the extent to which any loss is

not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" must be accompanied by a description or definition.

(2) When a disability insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy may state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

(3) When an advertisement contains an application form to be completed by the applicant and returned by mail, such application form shall contain a question or statement which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature or preceding the statement regarding the truthfulness of information provided in the application. For example, such an application form shall contain a question or statement substantially as follows: Do you understand that this policy will not pay benefits during the first (insert period of time) after the issue date for a disease or physical condition which you now have or have had in the past? YES

Or substantially the following statement: I understand that the policy applied for will not pay benefits for any loss incurred during the first (insert period of time) after the issue date on account of disease or physical condition which I now have or have had in the past.

R590-130-8. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability and Termination.

An advertisement which is an invitation to contract shall disclose the provisions relating to renewability, cancelability and termination, and any modification of benefits, losses covered, or premiums, in a manner which may not minimize or render obscure the qualifying conditions.

The terms "noncancelable" or "noncancelable and guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums set forth in the policy at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

The term "guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums at least to the age of 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

R590-130-9. Testimonials or Endorsements by Third

Parties.

A. A person shall be deemed a "spokesperson" if the person making the testimonial or endorsement:

(1) Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise; or

(2) Has been formed by the insurer, is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer; or

(3) Has any person in a policy making position who is affiliated with the insurer in any of the above described capacities; or

(4) Is in any way directly or indirectly compensated for making a testimonial or endorsement.

B. The fact of a financial interest or the proprietary or representative capacity of a spokesperson shall be disclosed in an advertisement and shall be accomplished in the introductory portion of the testimonial or endorsement in the same form and with equal prominence thereto. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." The requirement of this disclosure may be fulfilled by use of the phrase "Paid Endorsement" or words of similar import in a type style and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. In the case of non-print advertising, the required disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.

C. An advertisement may not state or imply that an insurer or an insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policy making position in the association, that fact must be disclosed.

D. When a testimonial refers to benefits received under an insurance policy, the specific claim data, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of three years after the last use of said testimonial in any advertisement. The use of testimonials which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefit being advertised is prohibited.

E. An advertisement may not imply that approval, endorsement or accreditation of policy forms or advertising has been granted by any division or agency of any state or federal government. "Approval" or filing of either policy forms or advertising may not be used by an insurer to state or imply that a governmental agency has endorsed or recommended the insurer, its policies, advertising or its financial condition.

R590-130-10. Use of Statistics and Exaggerations.

A. An advertisement may not represent or imply that claim settlements by the insurer are "liberal" or "generous," or use words of similar import, or that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for a unique claim under the policy advertised is misleading and may not be used.

B. The source of any statistics used in an advertisement shall be identified in such advertisement.

R590-130-11. Identification of Plan or Number of Policies.

A. When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose

that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.

B. When an advertisement which is an invitation to contract refers to various benefits which may be obtained only through two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

R590-130-12. Identity of Insurer.

A. The name of the actual insurer shall be stated in all advertisements. The form number or numbers of the policy advertised shall be stated in an advertisement which is an invitation to contract. An advertisement may not use a trade name, any insurance group designation, name of a parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device without disclosing the name of the actual insurer if the advertisement would be misleading or deceiving as to the true identity of the insurer.

B. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to combination of words, symbols or physical materials used by agencies of the federal government or of any state, or otherwise appear to be of such a nature that it would confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of any municipal, state or federal government.

C. Advertisements, envelopes or stationery which employ words, letters, initials, symbols or other devices that are so similar to those used in governmental agencies or by other insurers are not permitted if they may lead the public to believe:

(1) that the advertised coverages are somehow provided by or are endorsed by a governmental agency or such other insurers.

(2) that the advertiser is the same as, is connected with, or is endorsed by a governmental agency or such other insurers.

D. No advertisement may use the name of a state or political subdivision thereof in a policy name or description, unless the company name contains the same state or political subdivision name.

E. No advertisement in the form of envelopes or stationery of any kind may use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy advertised, or any producer who may call upon the consumer in response to the advertisement is connected with a governmental agency, such as the Social Security Administration.

F. No advertisement may incorporate the word "Medicare" in the title of the plan or policy being advertised unless, where ever it appears, said word is qualified by language differentiating it from Medicare. Such an advertisement, however, may not use the phrase "() Medicare Department of the () Insurance Company," or language of similar import.

G. No advertisement may imply that the reader may lose a right or privilege or benefit under federal, state or local law if he fails to respond to the advertisement.

H. The use of letters, initials, or symbols of the corporate name or trademark that would have the tendency or capacity to mislead or deceive the public as to the true identity of the insurer is prohibited unless the true, correct and complete name of the insurer is in close conjunction and in the same size type as the letters initials or symbols of the corporate name or trademark.

I. The use of the name of an agency or "() Underwriters" or "() Plan" in type, size and location so as to mislead or deceive as to the true identity of the insurer or advertiser is prohibited.

J. The use of an address that is misleading or deceiving as to the true identity of the insurer or advertiser, its location or licensing status is prohibited.

K. No insurer or advertiser may use, in the trade name of its insurance policy, any terminology or words so similar to the name of a governmental agency or governmental program that will confuse, deceive or mislead the prospective purchaser regarding governmental sponsorship, endorsement, or connection with the insurance policy or the insurer.

R590-130-13. Group or Quasi-Group Implications.

A. An advertisement of a particular policy may not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates or underwriting privileges, unless such is the fact and renewal rates are also given special or preferred status.

B. This rule prohibits the solicitations of a particular class such as governmental employees, by use of advertisements which state or imply that their occupational status entitles them to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

R590-130-14. Enforcement Procedures.

Advertising File. Each insurer or advertiser shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state, whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodic inspection by this Department. All such advertisements shall be maintained in said file for a period of three years from date of last use.

R590-130-15. Severability Provision.

If any section or portion of a section of these rules, or the applicability thereof to any person or circumstance is held invalid by a Utah or Federal court, the remainder of the rules, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

R590-130-16. Filing for Prior Review.

The commissioner may, at his discretion, require the filing with the department, for review prior to use, of advertising material, for informational purposes only.

**KEY: insurance law
1990**

**31A-2-201
Notice of Continuation September 15, 2010 31A-23a-402**

R590. Insurance, Administration.**R590-258. Email Address Requirement.****R590-258-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3), which authorizes the commissioner to adopt rules to implement the provisions of Title 31A, and Subsection 46-4-501(1), which authorizes state governmental agencies to make rules relating to electronic transactions and records.

R590-258-2. Purpose and Scope.

(1) The purpose of this rule is to require a licensed or registered person to have a current valid email address on file with the commissioner in order to:

- (a) improve the accuracy, reliability, and promptness of communications between the department and those persons to whom the rule applies;
- (b) reduce mailing expense;
- (c) promote paperless interaction with a licensed or registered person; and
- (d) support the Utah Health Exchange.

(2) Scope. This rule applies to an individual, agency, provider, insurer, and other organization licensed or registered by the commissioner to do business in Utah.

R590-258-3. Requirement to Submit and Maintain a Valid Email Address.

(1) A person to whom this rule applies shall submit to, and maintain with, the commissioner a valid business email address where the person can receive from the department, communication which includes, but is not limited to:

- (a) a general notification;
- (b) a license renewal notice;
- (c) a billing invoice;
- (d) a consumer complaint;
- (e) a request for information; or
- (f) other correspondence.

(2) A person to whom this rule applies must confirm that the spam filter for the email address required in Subsection (1) above will accept email correspondence from the department.

(3) Correspondence sent by the department to the email address required in Subsection (1) above shall be considered received by the person.

(4) A change of email address shall be submitted electronically at no cost to the licensed or registered person:

(a) an individual or agency licensee shall submit the change at <http://www.sircon.com/utah> or <http://www.nipr.com/>; and

(b) a licensed or registered person, other than an individual or agency licensee shall, submit the change at <http://clr.utah.gov/>.

R590-258-4. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-258-5. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-258-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
September 8, 2010

31A-2-201
46-4-501

R592. Insurance, Title and Escrow Commission.**R592-1. Title Insurance Licensing.****R592-1-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-404(2)(a)(ii) and (b), which direct the Title and Escrow Commission to make rules pertaining to the licensing of a title licensee and require the Title and Escrow Commission's concurrence in the issuance and renewal of title licensee licenses.

R592-1-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to establish rules for the licensing of a title licensee; and

(b) to concur in the issuance and renewal of a title license in accordance with Section 31A-2-404(2)(b).

(2) This rule applies to all title licensees and applicants for a title insurance license or renewal of a title insurance license.

R592-1-3. Definitions.

"Title licensee" has the same meaning as found in Section 31A-2-402(3).

R592-1-4. Licensing.

The Commission hereby grants its preliminary concurrence to the issuance or renewal of title insurance licenses issued by the commissioner, subject to final concurrence as specified in Section 5, to an applicant that:

(1) complies with Sections 31A-23a-104, 31A-23a-105, 31A-23a-106, 31A-23a-107, 31A-23a-108, and 31A-23a-204; and

(2) complies with Section 31A-23a-202 as an applicant for a renewal of a license; and

(3) meets all other requirements for the issuance of a license.

R592-1-5. Commission Concurrence with License Issuance or Renewal.

(1) The commissioner will report to the Title and Escrow Commission, at an interval and in a format acceptable to the commissioner and the Commission, the names of title licensee applicants or licensees:

(a) who were issued an initial license; and

(b) who were issued a renewal license.

(2) At a meeting of the Commission, the Commission shall give final concurrence or shall not concur with the licensing action of the commissioner.

(3) If the Commission votes to not concur with a licensing action of the commissioner for a licensee, the commissioner shall commence an administrative proceeding under the Utah Administrative Procedures Act to revoke, suspend, limit, or place on probation that license.

R592-1-6. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

R592-1-7. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

KEY: title insurance**September 30, 2005****Notice of Continuation September 15, 2010****31A-2-402**

R592. Insurance, Title and Escrow Commission.
R592-2. Title Insurance Administrative Hearings and Penalty Imposition.
R592-2-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e) and (h), to provide the process for conducting or delegating a title administrative hearing and imposing a penalty for a violation of statute or rule.

R592-2-2. Purpose and Scope.

- (1) The purposes of this rule are:
 - (a) to establish procedures for the commission:
 - (i) to delegate to the commissioner's administrative law judge the conduct of an administrative hearing to resolve a title insurance matter; or
 - (ii) to conduct an administrative hearing to resolve a title insurance matter; and
 - (b) to establish procedures for the commission,
 - (i) to impose penalties; and
 - (ii) for the commissioner to concur with the penalties imposed.
- (2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing the business of title insurance, and continuing education providers submitting title continuing education programs for approval.

R592-2-3. Definitions.

For purposes of this rule, the commission adopts the definitions set forth in Utah Code Annotated (U.C.A.) Title 31A and the following:

- (1) "Commission" means the Title and Escrow Commission.
- (2) "Commissioner" means Utah's insurance commissioner.
- (3) "Title insurance matter" means a matter related to:
 - (a) title insurance; and
 - (b) an escrow conducted by a title producer.

R592-2-4. Title Insurance Matters Referred for Enforcement.

- (1) A title insurance matter referred for enforcement will be resolved by:
 - (i) an informal adjudicative action pursuant to R592-2-5;
 - (ii) a stipulation and order issued by the commissioner; or
 - (iii) an administrative hearing conducted either by the commission or the commissioner's administrative law judge pursuant to R592-2-6.

R592-2-5. Imposition of a Penalty When an Informal Adjudicative Proceeding Is Used to Resolve a Title Insurance Matter.

- (1) If the commissioner uses an informal adjudicative proceeding as set forth in 63G-4-203 and R590-160 to resolve a violation listed in Table 1 below, the commissioner shall use the penalties imposed by the commission in this Section.
- (2) The commission shall impose the following penalties on title licensees for the violations listed in Table 1 below when resolved through an informal adjudicative proceeding.

Table 1

Violation	1 st Proceeding	2 nd Proceeding
Failure to complete required continuing education hours.	Individual: \$1,000; Agency: n/a	Individual: \$2,000; Agency: n/a
Failure to respond to an inquiry of the commissioner.	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500
Failure to file a required rate, form,	Individual: n/a; Agency: \$1,000	Individual: n/a; Agency: \$2,000

or report.

Late filing of a required rate, form, or report.	Individual: n/a; Agency: \$750	Individual: n/a; Agency: \$1,500
Failure to charge or collect a correct premium or a correct filed fee.	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
Charging or collecting a non-filed required fee.	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
Failure to pay assessment when due.	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500

R592-2-6. Use of an Administrative Hearing to Resolve a Title Insurance Matter.

- (1) When the commissioner sets a date for an administrative hearing to resolve a title insurance matter, the commissioner shall inform the commission of the hearing date.
- (2) After being informed of a hearing date, the commission shall:
 - (a) delegate the conduct of the administrative hearing to the commissioner's administrative law judge; or
 - (b) conduct the administrative hearing.
- (3) For an administrative hearing conducted by the commission, the commission shall:
 - (a) accept the date, time and place set by the commissioner or set a different date, time, and place for the administrative hearing;
 - (b) cause notification to be sent to the respondent(s), the commissioner's administrative law judge, and the commissioner's enforcement attorney of the date, time, and place of the administrative hearing;
 - (c) conduct the hearing pursuant to R590-160;
 - (d) impose penalties in accordance with Sections 31A-2-308, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214, subject to the concurrence of the commissioner; and
 - (e) issue an Order on Hearing.
- (4) The commissioner's administrative law judge shall assist the commission in its conduct of an administrative hearing.

R592-2-7. Imposition of Penalties.

- The commission shall impose a penalty as follows:
- (1) for an informal adjudicative proceeding, a penalty shall be imposed in accordance with Table 1 in R592-2-5;
 - (2) for a stipulation and order issued by the commissioner, the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner;
 - (a)(i) If the commission imposes a penalty other than that recommended by the commissioner, the respondent may:
 - (A) accept the commission's penalty; or
 - (B) reject the commission's penalty;
 - (b) if a respondent rejects the penalty imposed by the commission, the stipulation and order shall be rescinded and returned to the commissioner for resolution;
 - (3) for an administrative hearing conducted by the commissioner's administrative law judge pursuant to R592-2-6
 - (2)(a), the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner; or
 - (4) for an administrative hearing conducted by the commission, the commission shall impose a penalty, subject to the concurrence of the commissioner.

R592-2-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can

be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R592-2-9. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

KEY: title insurance

August 10, 2009

31A-2-402

Notice of Continuation September 15, 2010

R612. Labor Commission, Industrial Accidents.**R612-6. Notification of Workers' Compensation Insurance Coverage.****R612-6-1. Notification of Workers' Compensation Insurance Coverage.**

Any insurance carrier subject to the policy reporting requirements of Section 34A-2-205 may satisfy such reporting requirements by either of the following methods:

1. The insurance carrier may directly file the required information electronically with the Industrial Accidents Division in accordance with the International Association of Industrial Accidents Boards and Commissions (IAIABC) standards and format.

2. Alternatively, the insurance carrier may use an agent to file the required information electronically with the Industrial Accidents Division in accordance with IAIABC standards and format, provided that the agent has been authorized by the Labor Commission as meeting its electronic filing standards.

KEY: workers' compensation

October 16, 2001

34A-2-205

Notice of Continuation September 3, 2010

R651. Natural Resources, Parks and Recreation.**R651-601. Definitions as Used in These Rules.****R651-601-1. Division.**

"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.

"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.

"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.

"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.

"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.

"Park area" means any individual park property in the park system.

R651-601-7. Manager.

"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.

"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.

"Permit" means written authorization by a park representative.

R651-601-10. Posted.

"Posted" means displayed printed instruction or information.

R651-601-11. Person.

"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.

"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:

- (1) sales of goods or merchandise.
- (2) rentals of equipment.
- (3) collection of entrance or admission fees.
- (4) collection of storage or use fees.
- (5) sales of services.
- (6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. Commercial Gain.

"Commercial gain" means compensation in money,

services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.

"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.

"Special Use Permit" means a temporary authorization or concession, not to exceed one year, for the purpose of conducting commercial activity.

R651-601-16. Cooperative Agreement.

A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.

(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

KEY: parks, off-highway vehicles

August 22, 2006

Notice of Continuation July 7, 2008

41-22-10

79-4-203

79-4-304

79-4-601

R651. Natural Resources, Parks and Recreation.**R651-602. Aircraft and Powerless Flight.****R651-602-1. Landing or Taking Off.**

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

KEY: parks

April 1, 2003

Notice of Continuation July 7, 2008

79-4-501

R651. Natural Resources, Parks and Recreation.**R651-603. Animals.****R651-603-1. Pets.**

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter deposited by their pets/animals within the park area.

R651-603-2. Animal Exclusions.

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 26-30-2.

R651-603-3. Unattended Animal.

Leaving any animal unattended is prohibited except by permit.

R651-603-4. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-5. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

R651-603-6. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-7. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-8. Horse Use within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks**June 15, 2001****Notice of Continuation July 7, 2008****79-4-304****79-4-501**

R651. Natural Resources, Parks and Recreation.

R651-604. Audio Devices.

R651-604-1. Operation or Use of Audio Devices.

The operation or use of any audio or noise-producing devices in such a manner or at such a time so as to unreasonably disturb any person is prohibited.

R651-604-2. Operation or Use of a Public Address System.

The operation or use of a public address system or any other high volume audio devices without a permit is prohibited.

KEY: parks

1989

Notice of Continuation July 7, 2008

79-4-304

79-4-501

R651. Natural Resources, Parks and Recreation.

R651-605. Begging and Soliciting.

R651-605-1. Prohibition of Begging.

Begging is prohibited.

R651-605-2. Prohibition of Soliciting Except by Permit.

Soliciting of any type is prohibited except by authorized concessionaires or by permit.

KEY: parks

1989

Notice of Continuation July 7, 2008

79-4-304

79-4-501

R651. Natural Resources, Parks and Recreation.**R651-606. Camping.****R651-606-1. Permit Required for Camping in Undeveloped Areas.**

No person shall camp in undeveloped locations of a park area without proper permit.

R651-606-2. Reserved Campsites may not be Taken.

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

R651-606-3. Maximum Occupancy of Campsites.

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

R651-606-4. Payment Required before Occupancy of Campsite.

No person shall occupy camping facilities prior to payment of required fees.

R651-606-5. Time-Limit in Campsite may not be Exceeded.

No person shall exceed the limitation on the length of time persons may camp within a park area as approved in the park system fee schedule 79-4-203.

R651-606-6. Use of Showers.

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

R651-606-7. Camping only in Designated Areas.

All persons shall park or camp only in areas designated for those purposes.

R651-606-8. Time by which Campsites shall be Vacated.

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

R651-606-9. Clean-up of Campsite Required.

All persons shall remove all personal property, debris and litter prior to departing the site.

R651-606-10. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

KEY: parks**August 21, 2006****Notice of Continuation July 7, 2008****79-4-501**

R651. Natural Resources, Parks and Recreation.

R651-607. Disorderly Conduct.

R651-607-1. Applicability of the Utah Criminal Code.

Offenses against persons and property shall be handled through the Utah Criminal Code.

R651-607-2. Restricted Activities.

No person shall participate in a posted restricted activity.

KEY: parks

October 4, 1999

Notice of Continuation July 7, 2008

79-4-501

R651. Natural Resources, Parks and Recreation.**R651-608. Events of Special Uses.****R651-608-1. Permit Requirements.**

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may be held for the primary purpose of advertising the goods, wares or merchandise of a particular business establishment or vendor; (e) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date and time each conflicting request was received by the Division; (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

R651-608-2. Events Prohibited without Permit.

Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks

March 6, 2001

Notice of Continuation July 7, 2008

79-4-501

R651. Natural Resources, Parks and Recreation.

R651-609. Explosives and Fireworks.

R651-609-1. Use or Possession in Parks Prohibited without Permit.

The use or possession of explosives, fireworks, or firecrackers, except by permit, is prohibited within the park system.

KEY: parks

1989

79-4-501

Notice of Continuation July 7, 2008

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
Willard Bay
Jordanelle - Hailstone

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
Quail Creek
Bear Lake - Rendevous

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
Scofield
Steinaker
Red Fleet
Starvation

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
Kodachrome
Hyrum
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 - \$14.50
 - b. Nine holes general public (weekends and holidays) - \$14.50
 - c. Nine holes Jr weekdays (except holidays) - \$11.00
 - d. Nine holes Sr weekdays (except holidays) - \$12.00
 - e. 20 round card pass - \$240.00 - no holidays or weekends
 - f. Annual Promotional Pass (except holidays) - \$1,000.00
 - g. Business Class Membership Pass - \$1,000.00
 - h. Companion fee - walking, non-player - \$4.00
 - i. Motorized cart (9 holes - mandatory on Mt. course) - \$13.00
 - j. Motorized cart (9 holes single rider) - \$6.50
 - k. Pull carts (9 holes) - \$2.25
 - l. Club rental (9 holes) - \$6.00
 - m. School teams - No fee for practice rounds with coach and team roster (Wasatch County only). Tournaments are \$3.00 per player.
 - n. Tournament fee (per player) - \$5.00
 - o. Driving range - small bucket - \$2.50
 - p. Driving range - large bucket - \$5.00
 - q. Advance tee time booking surcharge - \$15.00
 - r. 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

June 10, 2009

79-4-802

Notice of Continuation February 13, 2006

R651. Natural Resources, Parks and Recreation.**R651-612. Firearms, Traps and Other Weapons.****R651-612-1. Unlawful Discharge of Weapons or Firearms.**

The discharge of weapons or firearms, including air and gas powered types, and all other devices capable of launching a projectile which could immobilize, injure, or kill any person or animal or damage property are prohibited in the park system unless:

(1) The weapon or device is being used for the legal pursuit of wildlife as per R651-614.

(2) The use of the weapon or device is authorized by a Special Use Permit or an authorized event as per R651-608.

(3) The weapon or device is used in accordance with UCA 53-5-701 Concealed Weapons Act, or UCA 76-2-402, 76-2-403, or 76-2-405.

(4) The weapon or device is being used by authorized law enforcement officers in the performance of their official duties in accordance with UCA 76-2-402.

KEY: parks, firearms

March 10, 2008

Notice of Continuation July 7, 2008

79-4-501

R651. Natural Resources, Parks and Recreation.**R651-613. Fires.****R651-613-1. Restrictions on Lighting and Maintaining Fires.**

The lighting or maintaining of a fire is prohibited except:

- (1) In designated camping and picnicking areas when the fire is confined in a fireplace or grill provided for that purpose,
- (2) in other locations by permit, and
- (3) in stoves or lanterns using gasoline, propane, or similar fuels.

R651-613-2. Fires must be Extinguished when not in Use.

All fires shall be completely extinguished when not in use. Leaving a fire unattended is prohibited.

R651-613-3. Throwing or Dropping of Burning Material.

Throwing or dropping of a lighted cigarette or other burning material is prohibited.

R651-613-4. Posted Restrictions Prohibiting Smoking or Fires.

Smoking or lighting fires is prohibited in the park area when such restriction is posted.

KEY: parks

1989

79-4-501

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-614. Fishing, Hunting and Trapping.****R651-614-1. Applicability of the Utah Fish and Game Code.**

Fishing, hunting and trapping shall be in accordance with the Utah Fish and Game Code, with the following provisions.

R651-614-2. Fishing near Public Areas.

Fishing from or within 100 feet of any public float designed for water sports, developed beaches, public loading docks, or boat ramps is prohibited.

R651-614-3. Ice Fishing.

Ice fishing is prohibited in areas posted closed by the park manager.

R651-614-4. Hunting Wildlife.

Hunting of any wildlife is prohibited within the boundaries of all park areas except those designated open as follows:

- (1)(a) Antelope Island State Park - By special permit only
- (b) Antelope Island permits to hunt bison shall be available, distributed and utilized consistent with the following statutes and rules of the Division of Wildlife Resources to the same extent as if the bison were considered wildlife: (1) Utah Code Sections 23-13-2; 23-19-1, 23-19-5; 23-19-6, 23-19-9(11), 23-19-11 and 23-20-27; (2) Utah Administrative Code Sections R657-5-4, R657-5-8 through 12, R657-5-14 and 15, R657-5-24 and 25, R657-5-27 and 28, R657-5-34, R657-5-37, R657-5-53, R657-5-62, and Rules R657-12, R657-23, R657-32, R657-42, and R657-50.
- (c) Subsection R651-614-4(1)(b) shall be applied retroactively only to the incorporation of Utah Administrative Code Sections R657-5-24, R657-5-25, R657-5-27, R657-5-34, and R657-5-37.
 - (2) Coral Pink Sand Dunes State Park - small game
 - (3) Deer Creek State Park - small game and waterfowl
 - (4) East Canyon State Park - small game
 - (5) Gunlock State Park - small game
 - (6) Huntington State Park - waterfowl
 - (7) Hyrum State Park - small game
 - (8) Jordanelle State Park - big and small game and waterfowl
 - (9) Minersville - waterfowl
 - (10) Quail Creek State Park - waterfowl
 - (11) Rockport State Park - waterfowl
 - (12) Scofield State Park - waterfowl
 - (13) Starvation State Park - big and small game
 - (14) Steinaker State Park - waterfowl, falconry between October 15 and April 14 annually.
 - (15) Pioneer Trail, Mormon Flat Unit - big and small game
 - (16) Wasatch Mountain State Park - big and small game
 - (17) Yuba State Park - small game

R651-614-5. Hunting with Firearms.

Hunting with rifles and handguns on park areas designated open is prohibited within one mile of all park area facilities, including, but not limited to buildings, camp/picnic sites, overlooks, golf courses, boat ramps and developed beaches. Shotguns and archery equipment are prohibited within one-quarter mile of above stated areas.

R651-614-6. Trapping.

All trapping on park areas is prohibited except when authorized and permitted by the park manager.

KEY: parks**October 2, 2003****79-4-501****Notice of Continuation July 7, 2008**

R651. Natural Resources, Parks and Recreation.**R651-615. Motor Vehicle Use.****R651-615-1. Traffic Rules and Regulations.**

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

R651-615-2. Blocking and Restricting Normal Use.

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

R651-615-3. Roadway and Parking Areas.

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

R651-615-4. Entering and Leaving Park Site.

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

R651-615-5. Off Road Use.

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

R651-615-6. Off-Highway Vehicles.

Operation of off-highway vehicles is prohibited on all park area roads unless authorized in accordance with the provisions of the Utah Off-Highway Vehicle Act.

R651-615-7. Motorized Transportation Devices.

Motorized Transportation Devices (MTD) that are powered by electric motors may be used for transportation to and from facilities and structures within the state parks.

KEY: parks, off-highway vehicles**July 19, 2004****Notice of Continuation July 7, 2008****79-4-203****41-22-10****79-4-501**

R651. Natural Resources, Parks and Recreation.

R651-616. Organized Sports.

R651-616-1. Organized Sports only in Designated Locations.

Organizing or participating in ball games, horseshoes, or other similar activities in picnic or campground areas is prohibited except in designated locations.

KEY: parks

1989

Notice of Continuation July 7, 2008

79-4-304

79-4-501

R651. Natural Resources, Parks and Recreation.**R651-620. Protection of Resources Park System Property.****R651-620-1. Applicability of Criminal Code.**

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

R651-620-2. Trespass.

(1) A person may be found guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 79-4-502 if that person engages in activities within a park area without specific written authorization by the division. These activities include:(a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements;(b)removal, extraction, use, consumption, possession or destruction of any natural or cultural resource;(c)grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112. A cause of action for the trespass of livestock may be initiated in accordance with 78B-2-305; (d)use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or(e)any use or occupation in violation of division rules.

(2) The provisions of this section do not apply to division employees in the performance of their duties.

(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

R651-620-4. Firewood.

Collecting or cutting of firewood is prohibited without a permit.

R651-620-5. Glass Containers.

Use or possession of glass containers is prohibited in posted areas.

R651-620-6. Metal Detecting.

Metal detecting is prohibited without a permit.

KEY: parks, trespass

November 16, 2004

Notice of Continuation July 7, 2008

79-4-502

R651. Natural Resources, Parks and Recreation.**R651-633. Special Closures or Restrictions.****R651-633-1. Emergency Closures or Restrictions.**

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(5) Palisade State Park - Cliff diving is prohibited;

(6) Red Fleet State Park - Cliff diving/jumping is prohibited; and

(7) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March 15 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March 15 to October 31 by permit or guided walk, the canyon is open from November 1 to March 14.

(d) Black Rocks Canyon is closed annually from March 15 to June 30,

(e) West Canyon climbing routes are closed annually from February 1 to June 1.

(f) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

(g) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks**March 26, 2009****Notice of Continuation October 30, 2008****79-4-203**

R710. Public Safety, Fire Marshal.**R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.****R710-4-1. Adoption of Fire Codes.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education. The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2009 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.2 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.3 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.4 "Fire Chief or Chief of the Department" means the AHJ.

2.5 "Fire Department" means the AHJ.

2.6 "Fire Marshal" means the AHJ.

2.7 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.8 "IBC" means International Building Code.

2.9 "ICC" means International Code Council, Inc.

2.10 "IFC" means International Fire Code.

2.11 "IFGC" means International Fuel Gas Code.

2.12 "IMC" means International Mechanical Code.

2.13 "IPC" means International Plumbing Code.

2.14 "LSC" means Life Safety Code.

2.15 "NEC" means National Electric Code.

2.16 "NFPA" means National Fire Protection Association.

2.17 "SFM" means State Fire Marshal.

2.18 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.**3.1 Fire Drills**

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have an emergency evacuation drill conducted at least every two months, to a total of four emergency evacuation drills during the nine-month school year. The first emergency evacuation drill shall be conducted within 10 school days of the beginning of classes.

f. In Group E occupancies, excluding secondary schools, if the AHJ approves, the monthly required emergency evacuation drill can be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence. The routine emergency evacuation drill for fire must be conducted at least every other evacuation drill.

g. A-3 occupancies in academic buildings of institutions of higher learning are required to have one emergency evacuation drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

3.2 Door Closures

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.3 Fire Protection Systems

3.3.1 IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.3.2 Water Supply Analysis

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

3.3.3 Fire Alarm Systems**3.3.3.1 Required Installations**

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

3.3.3.4 Fan Shut Down

3.3.3.4.1 Fan shut down shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.9.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the

codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, public buildings
September 7, 2010
Notice of Continuation June 8, 2007**

53-7-204

R710. Public Safety, Fire Marshal.**R710-5. Automatic Fire Sprinkler System Inspecting and Testing.****R710-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

There is adopted as part of these rules the following code which are incorporated by reference:

1.1 National Fire Protection Association, NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2008 edition, except as amended by provisions listed in R710-5-6, et seq.

1.2 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-5-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "NFPA" means National Fire Protection Association.

2.6 "NICET" means National Institute for Certification in Engineering Technologies.

2.7 "SFM" means State Fire Marshal or authorized deputy.

2.8 "UCA" means Utah State Code Annotated 1953 as amended.

R710-5-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM as required in UCA 53-7-225.5. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

3.2.2.1 Technician I

3.2.2.2 Technician II

3.2.2.3 Technician III

3.2.2.4 Master Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public

liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Technician I shall pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes, and complete the manipulative skills task book.

3.3.2 Technician II shall pass all the requirements listed for Technician I; pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks, and complete the manipulative skills task book.

3.3.3 Technician III shall pass all the requirements listed for Technician I and II; pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems, and complete the manipulative skills task book.

3.3.4 Master Technician shall have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems, and complete the manipulative skills task book.

3.4 Examinations will be given according to the following requirements:

3.4.1 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

3.4.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

3.4.3 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

3.4.4 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

3.4.5 To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3.4, those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take

a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

3.12.1 Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes.

3.12.2 Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks.

3.12.3 Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems.

3.12.4 Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

3.20 New Employees

New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags may be produced in any color except red or a variation of red.

4.1.3 A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of automatic fire sprinkler systems as required in NFPA, Standard 25, and the requirements of these rules. After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.2 Placement of Tag.

The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration "AFS" number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the

desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

4.8.1 No person or persons shall remove a service tag except when further service is performed.

4.8.2 No person shall deface, modify, or alter any service tag that is required to be attached to the system.

4.8.3 A red tag can only be removed by written authority from the AHJ.

4.9 Tag Dates

Service tags may be printed for any number of years not to exceed eight years.

R710-5-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-5-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line 16 of the "Inspection" section, the "Obstruction Reference" is changed from 14.2.2 to 14.2.1.

6.3 NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line one of the "Investigation" section, the "Obstruction Reference" is changed from 14.2.1 to 14.2.2.

6.4 Frequency and Labels

6.4.1 Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

6.4.2 Automatic fire sprinkler systems that pass the three-year and five-year inspection requirements as required in NFPA

25, Tables 5.1 and 13.1, shall have a label affixed to the riser indicating the specific inspection or inspections that was completed, the month and year those inspections were performed, the person who performed the inspection, and the person performing the inspections certificate of registration number.

6.4.3 The label shall be affixed to the riser using a heatless process, shall be 3 in. X 5 in., shall have the official seal of registration of the SFM affixed to the label, shall be constructed of durable material, and shall be the self-destructive type when removal is attempted.

6.5 Accepted Inspection Forms

6.5.1 Inspection forms listed in NFPA 25, Annex B, Section B.2, shall be used as the accepted inspection forms.

6.5.2 Inspection form format shall be as required in NFPA 25, Annex B, Section B.1(4).

6.5.3 A similar equivalent inspection form approved by the SFM may be used as the accepted forms for inspection, testing, and maintenance of water-based fire protection systems.

6.5.4 A copy of the completed inspection forms shall be left in a water proof container affixed to the riser.

6.6 New Systems

Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

R710-5-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

7.2.1 The applicant or person is not the real person in interest.

7.2.2 The applicant or person provides material misrepresentation or false statements on the application.

7.2.3 The applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination pursuant to Section 3.3 of these rules.

7.2.6 The applicant or person refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules.

7.2.8 The applicant or person has been convicted of one or more federal, state or local laws.

7.2.9 The applicant or person has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration.

7.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire sprinkler system equipment.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing

before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-5-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - \$30.00

8.1.1.2 Duplicate - \$30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - \$20.00

8.1.2.2 Re-examination - \$20.00

8.1.2.3 Three-year examination - \$20.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: automatic fire sprinklers

September 7, 2010

Notice of Continuation March 28, 2008

53-7-204

R710. Public Safety, Fire Marshal.**R710-6. Liquefied Petroleum Gas Rules.****R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "ASME Stamp" means the symbol used to designate that the container has been built to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.

2.2 "Board" means the Liquefied Petroleum Gas Board.

2.3 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.4 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.5 "Division" means the Division of the State Fire Marshal.

2.6 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.10 "LPG" means Liquefied Petroleum Gas.

2.11 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting

permission to such person to perform any act or acts for which authorization is required.

2.12 "NFPA" means the National Fire Protection Association.

2.13 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.14 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.15 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.16 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 The application for a license to engage in the business of LPG as required in 3.1 of these rules, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.4 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.5 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.6 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.7 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.8 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.9 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.10 List of Licensed Concerns.

3.10.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.10.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.11 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.12 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.13 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.14 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.15 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.16 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of \$5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.17 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts described in UCA, Section 53-7-308, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, and NFPA 58. Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

4.4.2 The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

4.4.3 Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.4 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.5 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.6 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.7 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.9 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.10 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Construction Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60

days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does

not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

R710-6-6. Fees.

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - \$450.00

6.1.1.1.2 Class II - \$450.00

6.1.1.1.3 Class III - \$105.00

6.1.1.1.4 Class IV - \$150.00

6.1.1.2 Branch office license - \$338.00

6.1.1.3 LPG Certificate - \$40.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - \$20.00

6.1.1.5 Duplicate - \$30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - \$30.00

6.1.2.2 Re-examination - \$30.00

6.1.2.3 Five year examination - \$30.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - \$150.00

6.1.3.2 5,000 water gallons or less of LPG - \$75.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - \$50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - \$250.00

6.1.6 Private Container Inspection (More than one container) - \$150.00

6.1.7 Private Container Inspection (One container) - \$75.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried

pipng located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3810.1 is amended as follows: On line two after the word "discontinued" add the words "for more than one year or longer as allowed by the Authority Having Jurisdiction (AHJ)".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person

seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section:

(A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (L) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

- 9.1.1 Concern failure to license - \$210.00 to \$900.00
- 9.1.2 Person failure to obtain LPG Certificate - \$30.00 to \$90.00
- 9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - \$210.00 to \$900.00
- 9.1.4 Concern doing business under improper class - \$140.00 to \$600.00
- 9.1.5 Failure to notify SFM of change of address - \$60.00
- 9.1.6 Violation of the adopted Statute or Rules - \$210.00 to \$900.00
- 9.2 Rationale.
 - 9.2.1 Double the fee plus the cost of the license.
 - 9.2.2 Double the fee plus the cost of the certificate.
 - 9.2.3 Double the fee plus the cost of the license.
 - 9.2.4 Double the fee.
 - 9.2.5 Based on two hours of inspection fee at \$30.00 per hour.
 - 9.2.6 Triple the fee.

KEY: liquefied petroleum gas
September 7, 2010
Notice of Continuation March 30, 2006

53-7-305

R710. Public Safety, Fire Marshal.**R710-8. Day Care Rules.****R710-8-1. Adoption of Codes.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

2.6.1 Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

2.6.2 Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "NFPA" means National Fire Protection Association.

2.10 "SFM" means State Fire Marshal.

R710-8-3. Amendments and Additions.**3.1 Exemptions**

3.1.1 Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

3.2 Fire Code Amendments

3.2.1 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Educational Group E, Day Care, is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I-4, day care facilities, Child care facility, is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 46, Section 4603.6.1 Group E is deleted.

3.3 Family Day Care

3.3.1 Family Day Care units shall have on each floor

occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

3.3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.3.2.1 Type 1 Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as allowed in IFC, Chapter 10, Section 1029.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.4.1 Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section 1009 or Section 1010 or Section 1026.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10, Standard for Portable Fire Extinguishers.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units monthly and shall include the complete evacuation from the building of all clients and staff. At least quarterly, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.4 Day Care Centers

3.4.1 Day Care Centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of Day Care Center.

3.4.2 Emergency Evacuation Drills shall be completed as required in IFC, Chapter 4, Section 405.

3.5 Requirements for all Day Care

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.5.2 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.5.3 The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.5.3.1 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-8-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the

codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, day care
September 21, 2010
Notice of Continuation March 16, 2007

53-7-204

R710. Public Safety, Fire Marshal.**R710-9. Rules Pursuant to the Utah Fire Prevention Law.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

R710-9-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Division" means State Fire Marshal.

2.5 "IFC" means International Fire Code.

2.6 "LFA" means Local Fire Authority.

2.7 "Restricted Account" means Firefighter Support Restricted Account.

2.8 "SFM" means State Fire Marshal or authorized deputy.

2.9 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.10 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire

prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Fire Advisory and Code Analysis Committee.

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor

Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-7. Enforcement of the Rules of the State Fire Marshal.

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-8. Fire Prevention Board Budget and Amendment Sub-Committees.

8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-9. Firefighter Support Restricted Account.

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

R710-9-10. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-12. Adjudicative Proceedings.

12.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

12.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

12.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

12.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

12.5 The Board shall act as the hearing authority, and shall

convene as an appeals board after timely notice to all parties involved.

12.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

12.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

12.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, law
September 7, 2010

53-7-204

Notice of Continuation June 8, 2007

R710. Public Safety, Fire Marshal.**R710-11. Fire Alarm System Inspecting and Testing.****R710-11-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test fire alarm systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2007 edition, except as amended by provisions listed in R710-11-6, et seq.

1.2 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.3 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-11-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Inspecting and Testing" means work completed to ensure that the system operates properly as required in Section 1.2 of these rules.

2.6 "IFC" means International Fire Code.

2.7 "NFPA" means National Fire Protection Association.

2.8 "NICET" means National Institute for Certification in Engineering Technologies.

2.9 "SFM" means State Fire Marshal or authorized deputy.

2.10 "Service" means inspecting and testing of fire alarm systems.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

R710-11-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

3.2.2.1 Basic Fire Alarm Technician

3.2.2.2 Fire Alarm Technician

3.2.2.3 Master Fire Alarm Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Basic Fire Alarm Technician shall pass a written examination on basic testing of fire alarm systems or shall be certified as a NICET I. The Basic Fire Alarm Technician shall complete the manipulative skills task book. Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.

3.3.2 Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician, and shall pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.

3.3.3 Master Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician, and shall pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.

3.4 Examinations will be given according to the following requirements:

3.4.1 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

3.4.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

3.4.3 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

3.4.4 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

3.4.5 To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3 of these rules, those applicants that have successfully completed the requirements and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules, shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not

affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

3.20 New Employees

New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags may be produced in any color except red or a variation of red.

4.1.3 A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules. After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.1.4 If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

4.2 Placement of Tag.

The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

4.8.1 No person or persons shall remove a service tag except when further service is performed.

4.8.2 No person shall deface, modify, or alter any service tag that is required to be attached to the system.

4.8.3 A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

4.9 Tag Dates.

Service tags may be printed for any number of years not to exceed eight years.

R710-11-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-11-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency.

Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section 3.1 of these rules.

6.3 New Systems.

Newly installed fire alarm systems are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

6.4 International Fire Code

6.4.1 IFC, Chapter 9, Section 907.3, Where required in existing buildings and structures, is deleted and rewritten as follows: "An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall

be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector".

6.4.2 IFC, Chapter 46, Section 4603.6, Fire alarm systems, are deleted and rewritten as follows: "An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector".

6.5 National Fire Protection Association

6.5.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.5.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.5.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.5.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.5.6 NFPA 72, Chapter 4, Section 4.5.2.1, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.

6.5.7 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.5.8 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.5.9 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.5.10 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

R710-11-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked,

if the SFM finds that the applicant or the person has committed any of the following violations:

7.2.1 The applicant or person is not the real person of interest.

7.2.2 The applicant or person provides material misrepresentation or false statements on the application.

7.2.3 The applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination or manipulative skills pursuant to Section 3.3 of these rules.

7.2.6 The applicant or person refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules.

7.2.8 The applicant or person has been convicted of violating one or more federal, state or local laws.

7.2.9 The applicant or person has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration.

7.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire alarm system equipment.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-11-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - \$40.00

8.1.1.2 Duplicate - \$30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - \$30.00

8.1.2.2 Re-examination - \$30.00

8.1.2.3 Three-year examination - \$30.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

**KEY: fire alarm systems
September 21, 2010**

53-7-204

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-320. Undercover Identification.****R722-320-1. Purpose.**

The purpose of this rule is to establish a program whereby the Department of Public Safety can assist federal, state, county, and local law enforcement agencies in concealing the true identity of undercover peace officers.

R722-320-2. Authority.

This rule is authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

R722-320-3. Definitions.

(1) "Chief administrative officer" means the commissioner of public safety, a chief of police or sheriff of any municipality or county of this state, or the agent in charge of operations in this state for any federal law enforcement agency.

(2) "Peace officer" means anyone employed in one of the four peace officer classifications in Section 53-13-102.

(3) "Undercover identification" means identification issued to a peace officer which allows the true identity of the officer to be concealed from criminal suspects and their associates.

(4) "Undercover investigation" means a criminal investigation conducted by a peace officer which is authorized by the officer's agency and where the true identity of the officer must be concealed from criminal suspects and their associates.

R722-320-4. Type of Assistance Provided.

The department will assist federal, state, county, and local law enforcement agencies in obtaining identification and personal history information for their peace officers who conduct undercover investigations.

R722-320-5. Issuance of Undercover Identification.

(1) The department may issue an undercover identification after receiving a written request from the chief administrative officer of a law enforcement agency. This request must be on official agency letterhead and shall include:

- (a) the reason the undercover identification is needed;
- (b) the real name and date of birth of the officer needing undercover identification;
- (c) the undercover name, date of birth, social security number, and address to be used by the officer; and,
- (d) the original signature of the chief administrative officer.

(2) Each request may be for one officer only. Multiple requests in the same letter will not be honored.

(3) Processing a request for undercover identification is time consuming for the department. Therefore, for the convenience of all parties, the officer intending to apply for undercover identification must call the department's Bureau of Criminal Identification (BCI) at (801) 965-4484 and make an appointment prior to coming in to apply for undercover identification.

(4) At the time of issuance the officer must:

- (a) present to BCI (4501 South 2700 West, Second Floor, Salt Lake City, Utah) the original letter of request from the chief administrative officer;
- (b) provide a copy of valid identification issued by the officer's agency indicating that he/she is a peace officer; and,
- (c) complete the application form provided by the department.

(5) The department may issue an undercover identification if the requirements of this rule are met and the department believes that such issuance is in the best interests of law enforcement.

R722-320-6. Expiration of Undercover Identification.

(1) Undercover identification issued pursuant to this rule:

- (a) shall automatically expire six months after it is issued;
- (b) must be returned to the department by the officer's agency within 30 days in the case of an officer who is reassigned to a position no longer requiring the use of undercover identification; and

(c) must immediately be returned to the department by the officer's agency in the case of an officer who terminates employment with the agency.

(2) No officer may be issued undercover identification if any undercover identification previously issued to another officer of the same agency is not accounted for to the satisfaction of the department.

(3) A chief administrative officer may request that an undercover identification issued to an officer of his/her agency be extended beyond the six month expiration referred to in this section if:

(a) a written request for extension signed by the chief administrative officer is received by the department prior to the expiration date; and

(b) the written request demonstrates to the satisfaction of the department extenuating circumstances justifying the extension.

R722-320-7. Revocation of Undercover Identification.

The department may revoke an undercover identification:

(1) if the undercover identification was used for a purpose not related to an active undercover investigation;

(2) if the officer has been charged with a crime or is under investigation for any wrong doing that would compromise the undercover identification program or not be in the best interests of law enforcement; or

(3) for any violation of this rule.

R722-320-8. Surrender of Undercover Identification.

A peace officer whose undercover identification has expired or which has been revoked shall immediately surrender his/her undercover identification to the department.

R722-320-9. Appeal.

(1) In accordance with Subsection 63G-4-202(1) the department hereby designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) An officer (appellant) whose request for undercover identification has been denied or whose undercover identification has been revoked, may appeal such denial or revocation to the department's administrative law judge (ALJ). The appeal must be filed on a form provided by the department. The appeal shall be considered a request for agency action in accordance with Subsection 63G-4-201(1)(b).

(a) The appeal must be filed within thirty days after the appellant receives notice of the denial or revocation.

(b) The appellant will not receive a hearing on the appeal. The ALJ will review the appeal and issue a written decision on it in compliance with Subsection 63G-4-203(1)(i) within ten days after receiving it.

(3) An appellant who is dissatisfied with the ALJ's decision may file a request for reconsideration with the ALJ within ten days after receipt of the decision. If the ALJ does not issue an order within twenty days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the appellant may seek judicial review in accordance with Section 63G-4-402.

R722-320-10. Records Protected.

All records pertaining to the issuance of an undercover identification shall be protected under Subsection 63G-2-305(9).

KEY: law enforcement, criminal investigation, undercover

identification
June 14, 1999
Notice of Continuation May 14, 2008

53-10-104

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-330. Licensing of Private Investigators.****R722-330-1. Purpose.**

The purpose of this rule is to define the licensing and regulation standards of private investigators as set forth in Title 53, Chapter 9, the "Private Investigator Regulation Act."

R722-330-2. Authority.

This rule is authorized by Subsection 53-9-103(6).

R722-330-3. Definitions.

A. Terms used in this rule are defined in Section 53-9-102.

B. In addition:

1. "Act constituting dishonesty or fraud" as used in Subsection 53-9-108(1)(a)(iv), means conviction of any crime as itemized in R724-4-3(M).

2. "Act involving illegally using, carrying, or possessing a dangerous weapon" as used in Subsection 53-9-108(1)(a)(ii), means conviction of any firearms violation involving a crime of violence.

3. "Act of personal violence or force on any person or threatening to commit any act of personal violence or force against another person" as used in Subsection 53-9-108(1)(a)(iii), means conviction of any crime in Subsection 76-10-501(2)(b).

4. "Division" means the Division of Law Enforcement and Technical Services of the Department of Public Safety.

5. "Moral turpitude" as used in Subsection 53-9-108(1)(a)(v), means conviction of any crime in R724-4-3(M).

R722-330-4. Application.

A. Applicants must use the application form provided by the division.

B. Applicants will be classified into three categories as set forth in Section 53-9-107: agencies, registrants, and apprentices.

1. If approved for licensure, an agency applicant will receive one private investigation agency license and one identification card.

2. Registrants and apprentices must be employed or contracted by a licensed agency.

C. Applicants must meet the qualifications set forth in Section 53-9-108 and will be required to provide all of the information and fees as set forth in Sections 53-9-109 through 111. Previous work experience must be verifiable for it to apply to the work experience requirement.

R722-330-5. Fees.

A. The information regarding license and registration fees as established by Section 53-9-111, shall apply to this rule.

B. In addition, in accordance with Section 53-9-111, a fee of \$24 shall be charged for fingerprint processing and background investigation for each applicant. This fee is non-refundable.

R722-330-6. Issuance and Expiration of Identification Cards.

A. Information regarding the issuance and expiration of identification cards is set forth in Section 53-9-112.

B. In addition:

1. The board shall not issue licenses or registrations, but rather shall review applications and then make recommendations to the commissioner for approval or disapproval.

2. Upon approval by the commissioner, the division shall issue to the applicant an identification card that will expire two years from the issue date.

R722-330-7. Records Access.

A. Information supplied to the division by an applicant, including the completed application form, shall be considered "private" information in accordance with Section 63G-2-302.

B. Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsections 53-9-118(2)(e) and 63G-2-305(8). However, if such information is used as the basis for denial of a license or registration or discipline of a licensee or registrant, such information shall be considered "private" information in accordance with Section 63G-2-302 and the applicant shall have access to it.

R722-330-8. Adjudicative Proceedings.

A. The adjudicative proceedings set forth in this section shall be conducted informally as authorized by Section 63G-4-202 and as set forth in Section 63G-4-203.

B. Denials of initial and renewal licenses or registrations are appealable as set forth in Section 53-9-113.

C. The board may take disciplinary action against a licensee or registrant for violation of Subsection 53-9-118(1).

1. Except for summary suspension in emergency cases, disciplinary action will be taken only after the issuance of a notice of intent to discipline and an opportunity for hearing. A letter of caution is not considered to be disciplinary action and is not appealable.

2. The notice of intent to discipline will be issued by the commissioner, and will notify the licensee or registrant of the charge(s) and the right to a hearing before the board within 60 days.

3. Following the hearing, the board may take any of the actions set forth in Subsection 53-9-118(6).

D. Appeals to the Commissioner on denials of initial and renewal licenses or registrations are provided for in Subsection 53-9-113(4). Appeals to the commissioner on disciplinary action are provided for in Subsection 53-9-118(8). Such appeals to the commissioner shall not result in de novo hearings before the commissioner, but rather shall result in a review of the board's findings by the department's administrative law judge, who shall review the board's findings and issue a recommendation to the commissioner for the commissioner's approval and decision. The decision of the commissioner is appealable to the district court in accordance with Subsection 53-9-113(5) and Subsection 53-9-118(9) pursuant to Section 63G-4-402.

KEY: private investigators, license

June 14, 1999

Notice of Continuation April 22, 2010

53-9-103(6)

R728. Public Safety, Peace Officer Standards and Training.
R728-409. Suspension or Revocation of Peace Officer Certification.

R728-409-1. Authority.

Section 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension or revocation of a peace officer's certification.

R728-409-3. Definitions.

A. Terms used in this rule are defined in Section 53-6-102.

B. In addition:

1. "ALJ" means an administrative law judge who conducts administrative hearings as provided in Subsection 53-6-211(3);

2. "Garrity warning" means a warning issued based on the decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967);

3. "on duty" means that a peace officer is:

a. actively engaged in any of the duties of his employment as a peace officer;

b. receiving compensation for activities related to his employment as a peace officer;

c. on the property of a law enforcement facility;

d. in a law enforcement vehicle which is located in a public place; or

e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;

4. "respondent" means a peace officer against whom the division has initiated an adjudicative proceeding under Section 53-6-211;

5. "revocation" means the permanent deprivation of a peace officer's certification, which does not allow for a peace officer whose certification has been revoked to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification reinstated or restored by the division;

6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and

7. "suspension" means the temporary deprivation of a peace officer's certification.

R728-409-4. Cause for the Suspension or Revocation of a Peace Officer's Certification.

The division may initiate an investigation when it receives information that grounds for the suspension or revocation of a peace officer's certification exist under Subsection 53-6-211(1).

R728-409-5. Conduct Not in Violation of Subsection 53-6-211(1).

Conduct which shall not be considered a violation of Subsection 53-6-211(1) includes:

A. Any traffic offense which is a class C misdemeanor or infraction;

B. A violation of a law enforcement agency's policy or procedure;

C. Conduct which is discovered or established through questioning which goes beyond the scope of a properly administered interview as established in *Garrity v. New Jersey*, 385 U.S. 493 (1967); or

D. Sexual activity which is protected under the right of privacy as recognized by the United States Supreme Court in *Lawrence v. Texas*, 539 U.S. 558 (2003).

R728-409-6. Investigative Procedure.

A. The division shall initiate an investigation when it receives information from any reliable source that grounds for the suspension or revocation of certification exist under Subsection 53-6-211(1), including when any of the following circumstances occur:

1. A peace officer is charged with a criminal violation of law;

2. A peace officer has committed conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

3. A peace officer has committed conduct in violation of Subsection 53-6-211(1), where the peace officer's employing agency has conducted disciplinary action and notified the division;

4. A peace officer is terminated for conduct which is in violation of Subsection 53-6-211(1);

5. A peace officer resigns for conduct which is in violation of Subsection 53-6-211(1);

6. A citizen makes a complaint which, on its face, appears to be a violation of Subsection 53-6-211(1);

7. The media reports about officer misconduct which appears to be in violation of Subsection 53-6-211(1) and there is independent evidence to confirm that the conduct occurred;

8. A peace officer or law enforcement agency makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

9. A criminal justice related agency or political subdivision makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

10. A background investigation has been conducted by the division on a peace officer seeking peace officer certification or entrance into a certified peace officer training program which indicates that the peace officer has engaged in conduct in violation of Subsection 53-6-211(1); or

11. A peace officer has provided false information to the peace officer's employing agency after having been issued a properly administered Garrity warning.

C. A citizen seeking to file a complaint against a peace officer may be required to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

D. A peace officer seeking to file a complaint against another peace officer may submit written documentation detailing the incident.

E. If the division receives a complaint or information about misconduct of a peace officer, an investigator from the division will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

F. If a peace officer under investigation is employed by a law enforcement agency, the division shall notify the peace officer's employing agency concerning the complaint or information, unless the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

G. The division will refer any complaints made by officers or citizens of a criminal nature to the appropriate law enforcement agency having jurisdiction for investigation and prosecution if such a referral has not already been made.

H. If the law enforcement agency which employs the peace officer has an open and active investigation, the division will wait until the agency has completed their investigation before taking action unless the division determines that it is not

in the public's best interest to wait.

I. The division may use the information gathered by the law enforcement agency which employs the peace officer in its investigation and may use any adjudicative findings to help determine what course of action to take. This will not preclude the division from conducting an independent investigation if the division finds it is necessary.

J. The division will take action based on the actual conduct of the peace officer as determined by an investigative process, not necessarily on the punishment instituted by the law enforcement agency which employs the peace officer or any court findings.

K. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

L. If ordinary investigative procedures cannot resolve the facts at issue, a peace officer may be requested to submit to a polygraph examination.

M. The director may immediately suspend a peace officer's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

N. Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

O. If the division determines that there is insufficient evidence to find that a peace officer engaged in conduct in violation of Subsection 53-6-211(1), the director shall issue a letter to the peace officer indicating that the investigation has been concluded and that the division shall take no action.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of an adjudicative proceeding will be to determine whether there is sufficient evidence to find that the respondent committed the alleged conduct by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1).

B. All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-8. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

A. Except as provided by 63G-4-502 all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be commenced by the filing of a Notice of Agency Action.

B. The Notice of Agency Action shall be signed by the director and shall comply with the requirements of Section 63G-4-201.

C. The Notice of Agency Action shall be filed with the division and a copy shall be sent to the respondent by certified mail.

R728-409-9. Responsive Pleadings.

A. The respondent must file with the division a written response, signed by the respondent or his attorney, within 30 days of the mailing date of the Notice of Agency Action.

B. The written response must comply with the requirements in Section 63G-4-204.

R728-409-10. Consent Agreements.

A. Once a Notice of Agency Action has been issued, the division may seek a consent agreement with the respondent.

B. The respondent will have 20 days from the date that the consent agreement is signed by the director to respond to the division regarding the consent agreement.

C. If a consent agreement is not sought or is not reached, the adjudicative proceeding will continue. The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the parties are unable to reach a consent agreement.

D. If a consent agreement is reached, it shall be signed by the respondent and the director and be filed with the division. The consent agreement shall indicate that the matter shall be heard at the next regularly scheduled council meeting.

R728-409-11. Default.

A. The ALJ may enter an order of default against a party if:

1. the respondent fails to file the response required by rule R728-409-9; or

2. the respondent fails to attend or participate in the hearing.

B. The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. The ALJ shall issue the order of default. The order of default shall be filed with the division and a copy shall be sent to the respondent by certified mail.

D. The respondent may seek to set aside the default order by filing a motion within 3 months of the date of the order of default. The ALJ may set aside the order of default for good cause shown.

R728-409-12. Scheduling a Hearing Before the ALJ.

A. After the division receives the responsive pleading from the respondent, notice of the location, date and time for the hearing will be issued by the division. The notice of hearing shall be filed with the division and a copy shall be sent to the respondent by certified mail.

B. The hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-13. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct only limited discovery. A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

B. Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

C. The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq. The division may charge a fee for discovery in accordance with Section 63G-2-203.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Section 53-6-210, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-14. Hearing Procedures.

A. All hearings shall be conducted by the ALJ according to the requirements of Section 63G-4-206.

B. At the hearing, the respondent has the right to be represented by an attorney. Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-15. ALJ Decision.

A. Within 30 days from the date a hearing is held, the ALJ

shall sign and issue a written decision, which shall include a statement of:

1. the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

2. the ALJ's conclusions of law; and

3. the reasons for the ALJ's decision.

B. If the ALJ finds that there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. If the ALJ finds that there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the matter will be dismissed.

D. The ALJ shall file the decision with the division and a copy shall be sent to the respondent by certified mail.

R728-409-16. Action by the Council.

A. Once a consent agreement has been reached or there has been an order of default or decision issued by the ALJ, the division shall present the matter to the council at their next regularly scheduled meeting. The division shall provide the council with the pleadings contained in the administrative file. The division shall also provide the council with any written information or comments provided by the chief, sheriff, or administrative officer of the respondent's employing agency.

B. At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's peace officer certification should be suspended or revoked.

C. The council shall review the matter and shall determine whether suspension or revocation of the respondent's peace officer certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010.

R728-409-17. Final Order.

A. After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

B. The final order shall indicate the action taken by the council with regards to the respondent's peace officer certification and shall include information on the appeal process outlined in R728-409-18.

C. The council's action shall be effective on the date that the final order is issued.

D. The council chairperson shall file the final order with the division. A copy of the final order shall be sent to the respondent by certified mail and the respondent's employing agency by regular mail.

R728-409-18. Judicial Review.

A. A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

B. The petition must meet all requirements specified in Sections 63G-4-401 and 403.

KEY: law enforcement officers, certification, investigations, rules and procedures
September 9, 2010 53-6-211
Notice of Continuation February 27, 2007

R746. Public Service Commission, Administration.**R746-351. Pricing Flexibility.****R746-351-1. Purpose and Authority.**

This rule establishes a procedure by which the pricing flexibility granted to an incumbent telephone corporation under Section 54-8b-2.3(2)(b) becomes effective.

R746-351-2. Definitions.

A. "Competitive Local Exchange Carrier" (CLEC) means a provider of public telecommunications services certificated by the Commission pursuant to 54-8b-2.1, other than an ILEC.

B. "Incumbent Local Exchange Carrier" (ILEC) means an incumbent telephone corporation as defined under Section 54-8b-2(4).

C. "Substitute or Substitutable Service" means a service offered by a CLEC that is an economic alternative in terms of quality, quantity, and price to that provided by the ILEC.

R746-351-3. Grant of Pricing Flexibility.

A. Procedure -- The Commission shall grant pricing flexibility to an ILEC in an independent proceeding brought by the ILEC, or in the certification proceeding for a CLEC for the same or substitutable services offered by the ILEC in the same geographic area served by both the CLEC and the ILEC. In granting pricing flexibility to an ILEC, the Commission shall:

1. define the geographic area in which pricing flexibility can become available to the ILEC; and
2. list the public telecommunications services the ILEC is authorized to price flexibly.

B. Grant Effectiveness -- A grant of pricing flexibility by the Commission to an ILEC does not become effective except as provided in Section R746-351-4.

R746-351-4. Effectiveness of Pricing Flexibility.

A. ILEC Petition -- Pricing flexibility granted to an ILEC does not become effective until all of the conditions specified in Section 54-8b-2.3(2)(b)(iii) have been satisfied. The ILEC shall:

1. Identify:
 - a. the CLEC and the docket in which pricing flexibility was granted to the ILEC;
 - b. the defined geographic area identified by the Commission, pursuant to R746-351-3(A)(1), in which pricing flexibility is to become effective for the ILEC;
 - c. the public telecommunications services being provided by the CLEC in the defined geographic area; and
 - d. The specific ILEC services, from the list of the public telecommunications services identified by the Commission pursuant to R746-351-3(A)(2), to be priced flexibly by the ILEC in the defined geographic area that are the same or substitutable for the public telecommunications services provided by the CLEC in the defined geographic area; and
2. Certify that:
 - a. the CLEC has begun providing the identified public telecommunications services in the defined geographic area;
 - b. the ILEC has allowed the CLEC to interconnect with the essential facilities and to purchase the essential services of the ILEC in accordance with the terms of an agreement approved by the Commission; and
 - c. the ILEC is in compliance with the applicable rules and orders of the Commission adopted or issued under Section 54-8b-2.2; and
3. Include:
 - a. a proposed price list or competitive contract for the service or group of services to be pricing flexibility; and
 - b. evidence which demonstrates that the prices to be offered by the ILEC under the proposed price list or competitive contract are in compliance with Section 54-8b-3.3.

B. Notice -- The ILEC shall serve notice of the request on:

1. all parties in the original proceeding in which the ILEC was granted pricing flexibility; and

2. all other certificated providers of public telecommunications services in the defined geographic area.

3. The notice shall include information on the time periods for responses and Commission action as provided in R746-351-4(C).

C. Time Frame -- Within 15 days after service of the notice of the request under this rule, the Commission shall grant, deny or determine whether a hearing is necessary to consider the request. Interested persons shall file responses to the request within 10 days after service of the notice of request.

D. Ruling -- The Commission shall issue a ruling determining the ILEC's compliance with Section 54-8b-2.3(2) and whether ILEC pricing flexibility is effective:

1. within 14 days after the Commission grants or denies a request, if there is no hearing on the request; or

2. if the Commission holds a hearing on the request, within 14 days after the conclusion of the hearing.

KEY: pricing flexibility*, public utilities, telecommunications**September 2, 1997****Notice of Continuation March 9, 2007****54-8b-2****54-8b-2.2****54-8b-2.3****63G-4-207****63G-4-503**

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.**

(1) Domicile.

(a) 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.

(b) 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.

(i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

(ii) Domicile applies equally to a permanent home within and without the United States.

(c) A domicile, once established, is not lost until there is a concurrence of the following three elements:

(i) a specific intent to abandon the former domicile;

(ii) the actual physical presence in a new domicile; and

(iii) the intent to remain in the new domicile permanently.

(d) 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.

(2) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

(3) Determination of resident individual status for military servicepersons.

(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows.

(i) 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.

(ii) 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.

(b) 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 Subsection (1)(c).

(c) 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.

(d) 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.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

(1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

(b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

(2) 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 defined under Section 59-10-103. This percentage is the Utah portion of AGI divided by the total AGI, not to exceed 100 percent.

(3) The Utah portion of a part-year resident's AGI shall be determined as follows:

(a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.

(b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of AGI. Any dividend exclusion shall be deducted from the Utah portion of AGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the AGI.

(d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.

(4)(a) 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 AGI:

(i) 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

(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

(b) Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of AGI only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

(5) Moving expenses deducted on the federal return may be deducted from the Utah portion of AGI only to the extent that they are for moving into Utah and within Utah.

(6) Employee business expenses may be deducted from the Utah portion of AGI only to the extent that they pertain to the production of income included in the Utah portion of AGI.

(7) Payments by a self-employed person to a retirement plan that reduce the total AGI may be deducted from the Utah portion of AGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

(8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity

taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

- (a) name;
- (b) address;
- (c) social security number;
- (d) percentage of ownership in pass-through entity;
- (e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal 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; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal 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.

(4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) an individual retirement account as defined under Section 408(a), Internal Revenue Code and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(iii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iv) a person exempt from state income tax under Section 59-10-104.1.

(6)(a) Subject to Subsection (6)(b), and for purposes of Subsection 59-10-1403.2(5), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(b) The provisions of Subsection (6)(a) shall be effective for taxable years beginning on or after January 1, 2010.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

- 1. subject to withholding for federal income tax purposes;
- 2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain

the following information:

1. the name and address of the employee and employer;
2. the employer's Utah withholding tax account number;
3. the amount of compensation;
4. the amounts of federal and Utah state income tax withheld;
5. the social security number of the employee;
6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and
7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

- (a) a federal Schedule H; or
- (b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of \$1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah

sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

(3) A partnership may satisfy the requirement to file a return with the commission by maintaining records that show each partner's share of income, losses, credits, and other distributive items, and making those records available for audit if:

- (a) all of the partnership's partners are resident individuals; and
- (b) the partnership is not a pass-through entity taxpayer.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax,

must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-91-24. 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, and 59-13-301, and Title 59, Chapter 10, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 10, and Title 63M, Chapter 1 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. Mandatory Withholding of Income for Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

(1) Definitions.

(a) "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.

(i) Duty days includes:

(A) 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 Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and

(B) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(b) "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.

(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.

(d) "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.

(i) Total compensation does 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.

(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in Subsection (5) are:

(A) 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

(B) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) 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;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(e) "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:

(i) 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

(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

(2) 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.

(3) 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.

(4) A professional athletic team:

(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and

(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.

(5) Nonresident professional athletes 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.

(6) 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.

(7)(a) Professional athletic teams shall withhold and remit tax on behalf of nonresident professional athletes on a form prescribed by the commission.

(b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional athletic team:

(i) name;

- (ii) address;
 - (iii) social security number;
 - (iv) income attributable to Utah for the nonresident member of a professional athletic team;
 - (v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;
 - (vi) the nonresident member of a professional athletic team's duty days both within and without the state;
 - (vii) the nonresident member of a professional athletic team's duty days within the state;
 - (viii) Utah tax deducted and withheld; and
 - (ix) federal income tax deducted and withheld.
- (8) A nonresident member of a professional athletic team is not required to file an individual income tax return if:
- (a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;
 - (b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and
 - (c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a professional athletic team receives from the professional athletic team.

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.

R865-91-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

(1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.

(2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is 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.

(3) A pass-through entity that is 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.

(4) For purposes of Title 59, Chapter 10, Part 14:

(a) 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

(b) 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.

(5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is 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.

KEY: historic preservation, income tax, tax returns, enterprise zones

September 23, 2010	31A-32A-106
Notice of Continuation March 20, 2007	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
	59-10-501
	59-10-503
	59-10-504
	59-10-507
	59-10-512
	58-10-514
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	59-10-603
	59-10-1003
	59-10-1006
	59-10-1014
	59-10-1017
	59-10-1021
	59-10-1023
	59-10-1106
	59-10-1403

59-10-1403.2
59-10-1405
59-13-202
59-13-301
59-13-302
63M-1
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.

(1) For purposes of this rule, "item" includes:

- (a) an admission;
- (b) a product transferred electronically;
- (c) a service; and
- (d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

(a) separately states the tax exempt items on the invoice; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

(a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller'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.

(1)(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) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) 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.

(3) 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.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) 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.

(b)(i) 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.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) 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-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.

(1)(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.

(b) 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.

(2) "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.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) 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.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) 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;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

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, 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-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.

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 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.

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. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

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.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) 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.

(3) 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-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.

(1)(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.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the

veterinarian resells.

(2) 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.

(3) 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.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

- (a) medical services;
- (b) boarding services; or
- (c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

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.

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) 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.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(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) 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 (2) 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.

(3) 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.

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-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 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.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment 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.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of 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.

KEY: charities, tax exemptions, religious activities, sales tax
September 23, 2010 9-2-1702
Notice of Continuation March 13, 2007 9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined,

produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to

royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful

life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.
- a) Compile a list of properties to be appraised by property class.
- b) Assemble a complete current set of ownership plats.
- c) Estimate personnel and resource requirements.
- d) Construct a control chart to outline the process.
2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.
3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.
4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.
 - a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.
 - b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.
 - c) Enter land class information and the calculated agricultural land use value on the appraisal form.
5. Develop a land valuation guideline.
6. Perform an appraisal on improved sold properties considering the three approaches to value.
7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price

of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.
10. Develop capitalization rates and gross rent multipliers.
11. Estimate the value of income-producing properties using the appropriate capitalization method.
12. Input the data into the automated system and generate preliminary values.
13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.
14. Develop an outlier analysis program to identify and correct clerical or judgment errors.
15. Perform an assessment/sales ratio study. Include any new sale information.
16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.
17. Calculate the final values and place them on the assessment role.
18. Develop and publish a sold properties catalog.
19. Establish the local Board of Equalization procedure.
20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee 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 101 - Basic Appraisal Principles;
- (ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);
- (iii) Course 501 - Assessment Practice in Utah;
- (iv) Course 502 - Mass Appraisal of Land;
- (v) Course 503 - Development and Use of Personal Property Schedules;
- (vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and
- (vii) Course 505 - Income Approach Application.

(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 employed in a county assessor office or the Property Tax Division, 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 courses 501 and 502;
 (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 courses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
 (iii) attain and maintain 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 courses 101, 103, 501, and 503; 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 courses 501 and 504;

(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, two re-examinations are allowed. If the re-examinations are 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 education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, 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 under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(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 performing the contracted 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 59-2-918.5 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 Section 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 Section 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 Sections 59-2-405 through 59-2-405.3 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 Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal 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 of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) 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.

(1) Definitions.

(a) "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.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) 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.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for

parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) 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.

(c) 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:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) 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.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) 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 Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b). (c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) 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 commission

approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) 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 commission for any necessary action.

(f) 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. 2011 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(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; and
- (E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "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 and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(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, or a uniform statewide fee under Section 59-2-404, 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
10	68%
09	38%
08 and prior	10%

(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) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and 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
10	86%
09	74%
08	67%
07	58%
06	49%
05	38%
04	28%
03 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
10	81%
09	63%
08	50%
07	35%
06 and prior	18%

- (d) Class 4 Short Life Expensed Property.
- (i) Property shall be classified as short life expensed property if all of the following conditions are met:
 - (A) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less;
 - (B) the property is the same type as the following personal property:
 - (I) short life property;
 - (II) short life trade fixtures; or
 - (III) computer hardware; and
 - (C) the owner of the property elects to have the property assessed as short life expensed property.
- (ii) Examples of property in this class include:
 - (A) short life property defined in Class 1;
 - (B) short life trade fixtures defined in Class 3 ; and
 - (C) computer hardware defined in Class 12.
- (iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
10	66%
09	50%
08	30%
07	15%
06	10%

- (e) 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
10	87%
09	76%
08	70%
07	62%

06	55%
05	46%
04	37%
03	25%
02 and prior	13%

- (f) 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 2011 percent good applies to 2011 models purchased in 2010.
- (vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
11	90%
10	75%
09	69%
08	63%
07	57%
06	52%
05	46%
04	40%
03	34%
02	28%
01	23%
00	17%
99	11%
98 and prior	5%

- (g) 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) microscopes; and
 - (D) 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
10	89%
09	79%
08	75%
07	69%
06	64%
05	58%
04	52%
03	42%
02	32%
01	21%
00 and prior	11%

- (h) 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
10	89%
09	79%
08	75%
07	69%
06	64%
05	58%
04	52%
03	42%
02	32%
01	21%
00 and prior	11%

(i) 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.

(j) 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
10	91%
09	82%
08	80%
07	76%
06	74%
05	69%
04	66%
03	59%
02	51%
01	43%
00	35%
99	26%
98	18%
97 and prior	9%

(k) 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.

(l) 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
10	62%
09	46%
08	21%
07	9%
06 and prior	7%

(m) 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) 2011 model equipment purchased in 2010 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
10	53%
09	50%
08	47%
07	43%
06	40%
05	37%
04	34%
03	31%
02	28%
01	25%
00	22%
99	18%
98	15%
97 and prior	12%

(n) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

- (ii) The 2011 percent good applies to 2011 models purchased in 2010.
- (iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
11	90%
10	66%
09	62%
08	59%
07	55%
06	52%
05	48%
04	45%
03	41%
02	38%
01	34%
00	31%
99	27%
98	24%
97	20%
96	17%
95 and prior	13%

(o) 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
10	47%
09	34%
08	24%
07	15%
06 and prior	6%

(p) 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
10	92%

09	86%
08	85%
07	84%
06	83%
05	82%
04	81%
03	76%
02	71%
01	64%
00	59%
99	53%
98	46%
97	40%
96	34%
95	28%
94	22%
93	15%
92 and prior	8%

(q) 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) sailboats 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 2011 percent good applies to 2011 models purchased in 2010.
- (vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
11	90%
10	61%
09	58%
08	56%
07	53%
06	51%
05	48%
04	46%
03	43%
02	41%
01	38%
00	36%
99	33%
98	31%
97	28%
96	26%
95	23%
94	21%

93	18%
92	16%
91	13%
90 and prior	11%

(r) 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.

(s) 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.

(t) 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
10	90%
09	81%
08	80%
07	75%
06	73%
05	69%
04	65%
03	57%
02	48%
01	39%
00	30%
99	20%
98 and prior	11%

(u) 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 2011 percent good applies to 2011 models purchased in 2010.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
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11	95%
10	83%
09	79%
08	74%
07	70%
06	65%
05	60%
04	56%
03	51%
02	46%
01	42%
00	37%
99	33%
98	28%
97	23%
96	19%
95 and prior	14%

(v) 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.

(w) 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.

(x) 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.

(y) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(z) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See 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
10	94%
09	88%
08	82%
07	77%
06	71%
05	65%
04	59%
03	54%
02	48%
01	42%
00	36%

99 and prior 30%

(aa) 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
10	81%
09	63%
08	51%
07	36%
06	20%
05 and prior	4%

(bb) 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.

(cc) 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
10	97%
09	95%
08	92%
07	90%
06	87%
05	84%
04	82%
03	79%
02	77%
01	74%
00	71%
99	69%
98	66%
97	64%
96	61%
95	58%
94	56%
93	53%
92	51%
91	48%
90	45%
89	43%
88	40%
87	38%
86	35%
85	32%
84	30%
83	27%
82	25%
81	22%
80	19%
79	17%
78	14%
77	12%

76 and prior 9%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2011.

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.

(1) 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 Subsection 59-2-1101(3)(d) or (e).

(2) 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:

- (a) the owner of record of the property;
- (b) the property parcel, account, or serial number;
- (c) the location of the property;
- (d) the tax year in which the exemption was originally granted;
- (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
- (f) the name and address of any person or organization conducting a business for profit on the property;
- (g) 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;
- (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
- (i) the name and address of the lessor of property described in Subsection (2)(h);
- (j) the signature of the owner of record or the owner's authorized representative; and
- (k) any other information the county may require.

(3) The annual statement shall be filed:

- (a) with the county legislative body in the county in which the property is located;
- (b) on or before March 1; and
- (c) using:
 - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - (ii) a form that contains the information required under Subsection (2).

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-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.

- (1) "Household" is as defined in Section 59-2-102.
- (2) "Primary residence" means the location where domicile has been established.
- (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.
- (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- (5) Factors or objective evidence determinative of domicile include:
 - (a) whether or not the individual voted in the place he claims to be domiciled;
 - (b) the length of any continuous residency in the location claimed as domicile;
 - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
 - (d) the presence of family members in a given location;
 - (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
 - (f) the physical location of the individual's place of business or sources of income;
 - (g) the use of local bank facilities or foreign bank institutions;
 - (h) the location of registration of vehicles, boats, and RVs;
 - (i) membership in clubs, churches, and other social organizations;
 - (j) the addresses used by the individual on such things as:
 - (i) telephone listings;
 - (ii) mail;
 - (iii) state and federal tax returns;
 - (iv) listings in official government publications or other correspondence;
 - (v) driver's license;
 - (vi) voter registration; and
 - (vii) tax rolls;
 - (k) location of public schools attended by the individual or the individual's dependents;
 - (l) the nature and payment of taxes in other states;
 - (m) declarations of the individual:
 - (i) communicated to third parties;
 - (ii) contained in deeds;
 - (iii) contained in insurance policies;
 - (iv) contained in wills;
 - (v) contained in letters;
 - (vi) contained in registers;
 - (vii) contained in mortgages; and
 - (viii) contained in leases.
 - (n) the exercise of civil or political rights in a given location;
 - (o) any failure to obtain permits and licenses normally required of a resident;
 - (p) the purchase of a burial plot in a particular location;
 - (q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.
 (a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.
 (b) 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.

(c) 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.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) 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.

(f) 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.

(g)(i) 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:

- (A) the owner of record of the property;
 - (B) the property parcel number;
 - (C) the location of the property;
 - (D) the basis of the owner's knowledge of the use of the property;
 - (E) a description of the use of the property;
 - (F) evidence of the domicile of the inhabitants of the property; and
 - (G) the signature of all owners of the property certifying that the property is residential property.
- (ii) The application under Subsection (6)(g)(i) shall be:
 (A) on a form provided by the county; or
 (B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2010 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	835
2) Cache	725
3) Carbon	540
4) Davis	875
5) Emery	520
6) Iron	835
7) Kane	435
8) Millard	825

9) Salt Lake	725
10) Utah	765
11) Washington	685
12) Weber	830

(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	735
2) Cache	620
3) Carbon	430
4) Davis	770
5) Duchesne	505
6) Emery	420
7) Grand	405
8) Iron	735
9) Juab	455
10) Kane	335
11) Millard	725
12) Salt Lake	625
13) Sanpete	560
14) Sevier	585
15) Summit	485
16) Tooele	470
17) Utah	665
18) Wasatch	510
19) Washington	585
20) Weber	730

(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	595
2) Box Elder	580
3) Cache	470
4) Carbon	285
5) Davis	620
6) Duchesne	355
7) Emery	265
8) Garfield	220
9) Grand	255
10) Iron	585
11) Juab	305
12) Kane	185
13) Millard	575
14) Morgan	405
15) Piute	350
16) Rich	185
17) Salt Lake	475
18) San Juan	180
19) Sanpete	410
20) Sevier	435
21) Summit	330
22) Tooele	315
23) Uintah	385
24) Utah	510
25) Wasatch	355
26) Washington	430
27) Wayne	345
28) Weber	580

(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	490
2) Box Elder	480
3) Cache	365
4) Carbon	185
5) Daggett	205
6) Davis	520
7) Duchesne	250
8) Emery	165
9) Garfield	120
10) Grand	155
11) Iron	480

12) Juab	205
13) Kane	85
14) Millard	470
15) Morgan	300
16) Piute	245
17) Rich	85
18) Salt Lake	370
19) San Juan	80
20) Sanpete	310
21) Sevier	335
22) Summit	230
23) Tooele	215
24) Uintah	285
25) Utah	410
26) Wasatch	255
27) Washington	325
28) Wayne	245
29) Weber	475

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	620
2) Box Elder	670
3) Cache	620
4) Carbon	620
5) Davis	675
6) Duchesne	620
7) Emery	620
8) Garfield	620
9) Grand	620
10) Iron	620
11) Juab	620
12) Kane	620
13) Millard	620
14) Morgan	620
15) Piute	620
16) Salt Lake	620
17) San Juan	620
18) Sanpete	620
19) Sevier	620
20) Summit	620
21) Tooele	620
22) Uintah	620
23) Utah	680
24) Wasatch	620
25) Washington	740
26) Wayne	620
27) Weber	670

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	245
2) Box Elder	260
3) Cache	270
4) Carbon	130
5) Daggett	160
6) Davis	270
7) Duchesne	165
8) Emery	140
9) Garfield	105
10) Grand	135
11) Iron	262
12) Juab	150
13) Kane	110
14) Millard	195
15) Morgan	197
16) Piute	192
17) Rich	107
18) Salt Lake	225
19) Sanpete	195
20) Sevier	200
21) Summit	205
22) Tooele	187
23) Uintah	207
24) Utah	250
25) Wasatch	210
26) Washington	230
27) Wayne	175
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	52
2) Box Elder	96
3) Cache	122
4) Carbon	52
5) Davis	50
6) Duchesne	57
7) Garfield	52
8) Grand	52
9) Iron	52
10) Juab	52
11) Kane	52
12) Millard	50
13) Morgan	67
14) Rich	52
15) Salt Lake	52
16) San Juan	53
17) Sanpete	57
18) Summit	52
19) Tooele	52
20) Uintah	57
21) Utah	52
22) Wasatch	52
23) Washington	50
24) Weber	80

(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	16
2) Box Elder	60
3) Cache	86
4) Carbon	16
5) Davis	15
6) Duchesne	21
7) Garfield	16
8) Grand	16
9) Iron	16
10) Juab	16
11) Kane	16
12) Millard	15
13) Morgan	31
14) Rich	16
15) Salt Lake	16
16) San Juan	17
17) Sanpete	21
18) Summit	16
19) Tooele	16
20) Uintah	21
21) Utah	16
22) Wasatch	16
23) Washington	15
24) Weber	45

(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	75
2) Box Elder	76
3) Cache	72
4) Carbon	52
5) Daggett	56
6) Davis	62
7) Duchesne	71
8) Emery	74
9) Garfield	79
10) Grand	80
11) Iron	75
12) Juab	66

13) Kane	77
14) Millard	79
15) Morgan	68
16) Piute	93
17) Rich	67
18) Salt Lake	68
19) San Juan	73
20) Sanpete	65
21) Sevier	66
22) Summit	74
23) Tooele	73
24) Uintah	80
25) Utah	65
26) Wasatch	54
27) Washington	68
28) Wayne	91
29) Weber	70

(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	25
2) Box Elder	25
3) Cache	23
4) Carbon	16
5) Daggett	16
6) Davis	20
7) Duchesne	24
8) Emery	23
9) Garfield	25
10) Grand	24
11) Iron	24
12) Juab	20
13) Kane	26
14) Millard	26
15) Morgan	22
16) Piute	29
17) Rich	22
18) Salt Lake	22
19) San Juan	24
20) Sanpete	21
21) Sevier	21
22) Summit	23
23) Tooele	23
24) Uintah	26
25) Utah	23
26) Wasatch	18
27) Washington	23
28) Wayne	30
29) Weber	21

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	17
2) Box Elder	18
3) Cache	16
4) Carbon	13
5) Daggett	13
6) Davis	14
7) Duchesne	15
8) Emery	16
9) Garfield	18
10) Grand	17
11) Iron	17
12) Juab	15
13) Kane	17
14) Millard	18
15) Morgan	14
16) Piute	20
17) Rich	15
18) Salt Lake	15
19) San Juan	16
20) Sanpete	15
21) Sevier	15
22) Summit	16
23) Tooele	15
24) Uintah	18
25) Utah	14
26) Wasatch	13
27) Washington	15
28) Wayne	20

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	6
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	6
9) Garfield	5
10) Grand	6
11) Iron	6
12) Juab	5
13) Kane	5
14) Millard	5
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	5
24) Uintah	6
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	5
29) Weber	6

(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 leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

- a) the name of the taxpayer awarded the judgment;

- b) the appeal number of the judgment; and
 - c) the taxing entity's pro rata share of the judgment.
2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:
- a) a copy of all judgment levy newspaper advertisements required;
 - b) the dates all required judgment levy advertisements were published in the newspaper;
 - c) a copy of the final resolution imposing the judgment levy;
 - d) a copy of the Notice of Property Valuation and Tax Changes, if required; and
 - e) any other information required by the Tax Commission.
- G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

- A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:
- 1. share-down 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.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal

property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment, and

(ii) demonstrated by clear and convincing evidence.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) valuation of a property that is not in existence on the lien date; and

(v) a valuation of a property assessed more than once, or by the wrong assessing authority.

(2) Except as provided in Subsection (4), 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:

(a) 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.

(b) 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.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) 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.

(3) Appeals accepted under Subsection (2)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(4) The provisions of Subsection (2) 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.

(5) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

a) the Utah Housing Corporation project identification number;

b) the project name;

c) the project address;

d) the city in which the project is located;

e) the county in which the project is located;

f) the building identification number assigned by the Internal Revenue Service for each building included in the project;

g) the building address for each building included in the project;

h) the total apartment units included in the project;

i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

(1) the rehabilitation of an existing building; or

(2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

(1) the number of bedrooms in the apartment unit;

(2) the size of the apartment unit in square feet; and

(3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of \$3,500 or less.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value of \$3,500 or less shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has \$3,500 or less of taxable tangible personal property in the county.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real

property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

- (i) class;
- (ii) property type;
- (iii) geographic location; and
- (iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

59-2-1002
 59-2-1004
 59-2-1005
 59-2-1006
 59-2-1101
 59-2-1102
 59-2-1104
 59-2-1106
 59-2-1107 through 59-2-1109
 59-2-1113
 59-2-1115
 59-2-1202
 59-2-1202(5)
 59-2-1302
 59-2-1303
 59-2-1317
 59-2-1328
 59-2-1330
 59-2-1347
 59-2-1351
 59-2-1365

KEY: taxation, personal property, property tax, appraisals
September 23, 2010 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
 59-2-103
 59-2-103.5
 59-2-104
 59-2-201
 59-2-210
 59-2-211
 59-2-301
 59-2-301.3
 59-2-302
 59-2-303
 59-2-303.1
 59-2-305
 59-2-306
 59-2-401
 59-2-402
 59-2-404
 59-2-405
 59-2-405.1
 59-2-406
 59-2-508
 59-2-515
 59-2-701
 59-2-702
 59-2-703
 59-2-704
 59-2-704.5
 59-2-705
 59-2-801
 59-2-918 through 59-2-924

R895. Technology Services, Administration.**R895-8. State Privacy Policy and Agency Privacy Policies.****R895-8-1. Purpose.**

The purpose of this rule is to:

- (1) establish a statewide policy for informing the public how personally identifiable information is collected and used by the State of Utah (State) websites;
- (2) describe the relationships that exist between State agency privacy policies and the Privacy Policy Statement for State of Utah Websites (the State Policy);
- (3) establish notification and posting requirements for State websites.

R895-8-2. Application.

All executive branch agencies of State government shall comply with this rule, except the State Board of Education, the Board of Regents and institutions of higher education, regardless of whether the State agency implements the State Policy or issues a website privacy policy of its own.

R895-8-3. Authority.

This rule is issued by the Chief Information Officer (CIO) under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated.

R895-8-4. Definitions.

As used in this rule:

- (1) "Conspicuous" means any material displayed, for example, in a manner that a reasonable person should notice it.
- (2) "Link" means a connection marker on a Web page that permits an Internet user to gain access to one web page from another.
- (3) "Home page" means the main, or first page retrieved when accessing an Internet Web site. It serves as a table of contents to the rest of the pages on the site or to other Web sites. This may refer to either a department home page or to other state agency pages such as those of an office or division.
- (4) "Personally identifiable information" means any information collected online that could serve to identify an individual, including:
 - (a) first and last name;
 - (b) physical address;
 - (c) e-mail address;
 - (d) telephone number;
 - (e) Social Security number;
 - (f) credit card information;
 - (g) bank account information; and
 - (h) any combination of personal information that could be used to determine identity.
- (5) "Privacy policy" means a policy or statement that describes how information collected is gathered, used, stored, retrieved, and protected.
- (6) "State agency" means any agency or administrative sub-unit of the executive branch of the State government, except:
 - (a) the State Board of Education; and
 - (b) the Board of Regents and institutions of higher education.
- (7) "State function" means an activity explicitly, or implicitly assigned by the legislature, as having a specific role in the operation of the state's government.
- (8) "Privacy Policy Statement For State of Utah Websites" means a statement approved by the Chief Information Officer and published on the state home page <http://www.utah.gov> that describes to Website users the state's privacy policy as established through this rule.
- (9) "Privacy Risk Assessment" means a series of questions approved by the Chief Information Officer that are designed to:

(a) assist agencies in identifying and reducing potential levels of risk to the privacy of individuals using an online government service through state of Utah Websites;

(b) provide information to assist in determining different levels of security;

(c) collect information needed to determine, and if necessary, create an agency privacy policy if one is needed in addition to the State Policy.

(10) "Website" means a set of documents or pages located on the World Wide Web.

R895-8-5. Agency Privacy Policies.

(1) A State agency may issue a privacy policy that provides additional detail to, but does not conflict with the terms of this rule.

(2) When a State agency is required by a federal statute, federal regulation, or State statute to collect or use the personally identifiable information of those accessing its website in a manner that is inconsistent with this rule, it shall issue a privacy policy of its own.

(3) An agency privacy policy issued in accordance with this rule shall apply only to the website of the issuing State agency.

(4) An agency may not substitute its own privacy policy for this rule, unless a state law, federal regulation or federal statute requires an agency to treat personally identifiable information in a way that is inconsistent with this rule. In this case, the specific provision or provisions of this rule that conflict with the state statute, federal regulation or federal statute does not apply. If that occurs, the remainder of the provisions of this rule shall apply to the agency.

R895-8-6. Use of Personally Identifiable Information.

(1) Any personally identifiable information an individual provides to a State website shall be used solely by the State, its entities, and third party agents with whom it has contracted to perform a state function on its behalf, unless:

(a) this rule is superceded by a federal statute, federal regulation, or State statute in which case the personally identifiable information shall be used by other parties only to the extent required by the superseding federal statute, federal regulation or State Statute, or

(b) the information is designated as public record by an individual State agency as authorized under Title 63G, Chapter 2 of the Utah Code, Government Records Access and Management Act.

R895-8-7. Notification and Posting Requirements.

(1) If either of the exceptions listed in R895-5-6 Subsection (1)(a) or (b) apply or if the State agency issues an agency privacy policy for its website as permitted under this rule, then the agency shall conspicuously post that information on the Web pages where personally identifiable information is collected or on the home page of its Website including the following:

(a) a notice that such personally identifiable information is subject to public access, if such information is public record;

(b) a notice and a summary or link to the citation of any State statute, federal statute, or federal regulation that supercedes part or all of this rule;

(c) a link to the agency's privacy policy;

(d) a link from the agency's website to this rule and

(e) a link from the agency's website to the State Policy.

(2) The agency privacy policy shall indicate:

(a) the name of the issuing agency;

(b) a statement that the agency privacy policy applies to its own website only;

(c) a statement about what personally identifiable information the policy specifically applies to; and

(d) a statement defining how its agency privacy policy differs from this rule.

(3) The effective date for this subsection shall be four months from the effective date of this rule for information collected through existing online applications. If requested in writing by the agency, an additional extension for up to 30-days may be given by the chief information officer. For all new online applications the conditions of this subsection must be met prior to the application going "live."

R895-8-8. Privacy Risk Assessment for Online Applications.

Each state agency shall complete a "Privacy Risk Assessment" that is authorized by the CIO, for all online applications. The agency shall maintain a copy of each completed assessment for a period of four years for the purpose of providing audit documentation.

R895-8-9. Periodic Audits.

The CIO may measure compliance of a State agency and its employees with this rule by conducting periodic audits in accordance with Section 63F-1-206, Utah Code Annotated. In performing audits, the CIO may utilize external auditors, an agency's internal auditor(s) or both.

R895-8-10. Statutes that may affect this Rule.

Included among the federal and State statutes that may supersede portions of this rule are the Driver's Privacy Protection Act of 1994, Title 18, Section 2721, United States Code; and Sections 41-1a-116, 53-1-104, 53-1-109, and 59-1-403, Utah Code Annotated.

KEY: privacy, website, CIO

December 20, 2001

Notice of Continuation December 4, 2006

63F-1-206

63G-3-201

63G-2-101 et seq.

R895. Technology Services, Administration.**R895-9. Utah Geographic Information Systems Advisory Council.****R895-9-1. Purpose.**

The purpose of this rule is to establish an advisory council to coordinate statewide GIS data efforts for collection, creation, and access, and to mutual collaboration by state entities.

R895-9-2. Authority.

The rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act and Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

R895-9-3. Scope of Application.

(a) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents and institutions of higher education, are to be included within the scope of this rule.

(b) This rule also provides for the organizational chairmanship and membership.

R895-9-4. Definitions.

(a) GIS data means any electronic data with location attributes that can be used by computer-based geographic information systems.

(b) GISAC means the Utah Geographic Information Systems Advisory Council established by this rule.

R895-9-5. Advisory Council Responsibilities.

(a) There is a geographic information system advisory council (GISAC) established and organized under the authority of the Chief Information Officer (CIO). The Council shall be chaired by the Manager of the Automated Geographic Reference Center (AGRC).

(b) The responsibilities of the council include:

(i) Serve as a coordinating and collaboration body for the collection, creation, and access of statewide GIS data, and;

(ii) Recommend to the State CIO any GIS policies or standards it believes should be considered by the CIO for implementation, and such as may need to be reviewed for promulgation as administrative rules.

(iii) Submit a progress report to the CIO by September 30 of each year.

R895-9-6. Council Membership and Organization.

(a) The Manager of the AGRC or designee.

(b) The Council shall meet bi-monthly or as determined by the Chair.

(c) The Council shall be composed of one GIS representative from each participating state entity, and such invited GIS representatives from local government, colleges/universities, and federal agencies as are selected by the chair.

R895-9-7. Rule Compliance Management.

A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

KEY: IT standards council, IT bid committee, technology best practices, repository

March 9, 2005

Notice of Continuation January 20, 2010

63F-1-206

63G-3-201

R895. Technology Services, Administration.**R895-11. Technology Services Adjudicative Proceedings.****R895-11-1. Purpose.**

Any adjudicative proceedings initiated according to the Utah Administrative Procedures Act, Section 63G-4-202, which fall under the jurisdiction of the Department of Technology Services are designated as informal proceedings.

30 days, the appeal is deemed denied.

**KEY: information technology, appellate procedures
1992**

Notice of Continuation June 8, 2006

63G-4-202

63F-1-206

R895-11-2. Authority.

Chapter 4 of Title 63G, Utah Administrative Procedures Act, requires this rule. It is enacted under the authority of Section 63F-1-206.

R895-11-3. Definitions.

The terms used in this rule are defined in Section 63G-4-103. In addition, "division" means the Division of Enterprise Services, and "department" means the Department of Technology Services.

R895-11-4. Informal Procedures.

All matters subject to Title 63G, Chapter 4 over which the division has jurisdiction shall be informally adjudicated. The director of the division or his or her designee shall be the presiding officer over any proceeding. The following procedures shall be followed:

A. No response need be filed to the notice of division action ("Notice") or request for division action ("Request").

B. The division shall hold a hearing only if: (1) a hearing is required by statute, or (2) a hearing is permitted by statute and a request for hearing is made within ten days after receipt of the Notice or Request. Otherwise, at the discretion of the division director, no hearing will be held.

C. Any hearing shall be open to all parties and held only after timely notice is given.

D. Only parties named in the Notice or Request shall be permitted to testify, present evidence, and comment on the issues.

E. No discovery, either compulsory or voluntary, shall be permitted. All parties to any action shall have access to information not restricted by law contained in the division's files or any investigatory information or materials.

F. No person (as defined in Administrative Procedures Act, Section 63G-4-103) may intervene in a division action unless federal statute or rule requires the division to allow intervention.

G. Within 30 days after the close of any hearing held under this rule, the division director shall issue a written decision. This decision shall state the reasons for the decision and include a notice of right of administrative review or appeal at the department level.

H. The division director's decision shall be based on the facts in the agency file and on evidence presented at the hearing, if held.

I. The division shall notify the parties of the division director's decision by promptly mailing a copy to each party at the address shown in the file.

J. An order issued under the provisions of this rule shall be the final order of the division and may be appealed to the department head.

R895-11-5. Appeals Procedure.

A. A written petition from the appealing party to the division director shall initiate an appeal. B. The division director shall review the issue and respond to the appealing party within 20 days. Conferences may be held to discuss the issue before a written response is given.

C. The appealing party may appeal the decision of the division director to the department director. All appeals must be in writing. If the department director does not respond within

R907. Transportation, Administration.
R907-65. Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities.

R907-65-1. Purpose.

The purpose of this rule is to implement a compensation schedule for longitudinal access to the rights-of-way of the interstate system for installation and operation of telecommunications facilities. This Rule establishes the methodology and schedules for charging compensation in accordance with Subsection 72-7-108(3)(b). Subsection 72-7-108(3)(b) requires that the compensation be:

- fair and reasonable;
- competitively neutral;
- nondiscriminatory;
- open to public inspection;
- established to promote access by multiple telecommunication facility providers;
- established for zones of the state, with zones determined based upon factors that include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;
- established to encourage the deployment of digital infrastructure within the state.

R907-65-2. Authority.

Subsection 72-7-108(3)(c) states that the department shall establish a schedule of rates of compensation for longitudinal access granted under that section, and shall do so beginning October 1, 1999, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R907-65-3. Background.

The department has conducted an analysis of right-of-way values for the interstate system using current market data on (1) Utah real property values differentiated by location (northern Utah (Salt Lake City/surrounding counties), central Utah (Provo/surrounding counties), and southern Utah (Cedar City/St. George/surrounding counties), population density (urban, rural) and land use (residential, commercial, industrial, agriculture) and (2) appraisal values from department land acquisitions. These data were applied to fifteen right-of-way segments of the interstate system that the department defined based on various factors, including but not limited to location, similarity of land use, population density and number of telecommunications subscribers. Segment land values were then calculated based on the relevant "across-the-fence" property values and the following core assumptions:

Land needed for longitudinal installations of telecommunications facilities, including a buffer zone, will generally be 6 feet in width.

Values for preassembled right-of-way for longitudinal access are 200% of values for non-assembled right-of-way.

Values for underground use of right-of-way for longitudinal access are 50% of values for ground level and aboveground use.

Upper and lower bound real property values establish a valuation range for each segment. Point estimates of segment land values are calculated at the 30th percentile within this range.

Segment land values (reported in \$/ft²) are converted to \$/mile using the following formula:

Segment land value (\$/mile) = Segment land value (\$/ft²) x 5,280 ft/mile x easement width (6 ft).

The fifteen segments were then grouped into five zones based on similarities in segment attributes and values. For example, the rural segments of I-15, I-70 and I-84 were grouped to create zone 1, while the urban segment of I-15 traversing Salt Lake City was grouped with I-215 to create zone 5. Similar

groupings make up zones 2, 3 and 4. Through this process, the department defined five zones with a weighted average land value for each zone.

The department then determined annual lease valuation, as a rate of return on the land values for each zone, using current market data. The department determined that a 10% annual rate of return on investment represents a fair and reasonable compensation rate in current market conditions.

The department also received and considered recommendations on rates of compensation from the Utility in Highway Rights-of-Way Task Force pursuant to Section 6(2)(a) of S. B. 150.

R907-65-4. Definitions.

The definitions of terms in R907-64-3 apply to the same terms used in this Rule. This Rule uses the following additional defined terms:

(1) "Land value" means the fair market value of land within the right-of-way of the interstate system as determined by the department under the core assumptions set forth in R907-65-3 and established for compensation purposes under R907-65-6.

(2) "Rate of return" means the annual rate of return on investment, using land value, as determined by the department and established for compensation purposes under R907-65-7.

(3) "Zone" means a group of right-of-way segments of the interstate system as determined by the department and established for compensation purposes under R907-65-5.

R907-65-5. Compensation Zones.

(1) Five zones of the State are established for purposes of determining land values and compensation rates for longitudinal access to the right-of-way of the interstate system.

(2) The five zones are:

Zone 1 - Segments traversing primarily rural, agricultural areas with low population density. The two primary segments in this zone are located south of Provo, extending to Arizona along I-15 and to Colorado along I-70. This zone also includes shorter segments of I-80 and I-84 bounded by the Wyoming and Nevada State lines respectively. Approximately 90% of this zone borders agricultural land.

Zone 2 - Segments traversing primarily sub-rural areas with low population density. Segments in this zone are located in the north-central, north-eastern and north-western regions of the State. Land usage is primarily agricultural (approximately 75%), with light pockets of industrial, commercial, and residential land usage.

Zone 3 - Segments traversing sub-rural/suburban land around the State's metropolitan areas with medium population density. Segments in this zone are located outside the Salt Lake City metropolitan area. Land usage is mixed; while agriculture still makes up the largest proportion of land usage, about one-third of the land is residential, and slightly less than one-third is commercial and industrial.

Zone 4 - Segments traversing suburban/urban areas with medium/high population density. Segments in this zone run on a north-south route on I-15 through the Salt Lake City metropolitan area. Land usage in this zone is mixed, with the greatest proportion categorized as industrial, followed by residential, then commercial, and small pockets of agricultural usage.

Zone 5 - Segments traversing the densely populated urban areas. Segments in this zone are located in and around Salt Lake City. Nearly half is categorized as residential, and the rest is split between industrial and commercial usage, with very small pockets of agricultural usage.

(3) The existing right-of-way of the interstate system is placed into the five zones as set forth in Table 1. Whenever new right-of-way is added to the interstate system, the

department shall modify Table 1 to classify the new right-of-way into the applicable zone or zones and publish the modified Table 1.

(4) At least once every five years the department shall conduct an analysis to determine changes, if any, in the boundaries of zones based on demographic and market data, including but not limited to data on similarity of surrounding land uses, population density, distances and number of telecommunications subscribers. The department shall publish a modification to Table 1 whenever zone boundaries are changed.

TABLE 1
Compensation Zones

Zone/Segment	Reference Post (from -- to)	Mileage
Zone 1		575
I-15: Payson South Int. to Arizona	252 -- 0	252
I-84: Tremonton to Idaho	43 -- 0	43
I-80: Wyoming to Silver Creek Int.	198 -- 148	50
I-70: Entire Route	0 -- 230	230
Zone 2		212
I-15: Idaho to Weber-Box Elder Co. Line	404 -- 354	50
I-15: Springville Int. to Payson South Int.	263 -- 252	11
I-84: Echo to SR-89	120 -- 88	32
I-84: SR-89 to I-15	88 -- 81	7
I-80: Magna Int. to Nevada	112 -- 0	112
Zone 3		50
I-15: Weber-Box Elder Co. Line to Parish Lane Int.	354 -- 323	31
I-80: Silver Creek Int. to Mouth of Parley's Canyon	148 -- 129	19
Zone 4		60
I-15: Parish Lane Int. to Salt Lake-Utah Co. Line	323 -- 288	35
I-15: Salt Lake-Utah Co. Line to Springville Int.	288 -- 263	25
Zone 5		47
I-80: Mouth of Parley's Canyon to Magna Int.	129 -- 112	17
I-215: Entire Route	0 -- 30	30

R907-65-6. Land Values.

(1) Land values for longitudinal access for telecommunications facilities are established, by zone, as set forth in Table 2. Whenever new right-of-way is added to the interstate system and a zone or zones are established for such new right-of-way under R907-65-5(3), the land value for such zone or zones set forth in Table 2 shall apply to such new right-of-way.

(2) At least once every five years, the department shall conduct a market analysis to determine the fair and reasonable values of the right-of-way of the interstate system for longitudinal access for telecommunications facilities. The department shall determine this value for each zone. The department shall publish a modification to Table 2 whenever the department completes a market analysis and determines that values of the right-of-way have changed.

(3) In determining land values, the department shall disregard any circumstance in which the department's interstate right-of-way is the only viable alternative for installing and operating telecommunications facilities between relevant geographic markets. The department shall adjust such values to those which would exist if another viable alternative existed for installing and operating comparable telecommunications facilities such that the department would not possess monopolistic market power in the subject location.

TABLE 2

Land Values (\$/mile)

Zone	Miles in Zone	Weighted Average Land Value
Zone 1	575	\$8,000
Zone 2	212	\$22,000
Zone 3	50	\$48,000
Zone 4	60	\$80,000
Zone 5	47	\$124,000

R907-65-7. Rate of Return.

(1) An annual rate of return on land value of 10% is established for purposes of determining annual compensation rates for longitudinal access to the right-of-way of the interstate system.

(2) At least once every five years the department shall conduct an analysis to determine changes, if any, in the rate of return based on market data. The department shall publish a modification to the rate of return whenever the department completes a market analysis and determines that market rate of return has changed.

R907-65-8. Base Compensation Schedule.

(1) The department shall charge compensation for longitudinal access for telecommunications facilities so that the department receives, on an annual basis, the rate of return on the value of land in each zone established under this Rule which is utilized for overhead, surface or underground installations of telecommunications facilities, subject to adjustment under R907-65-10 and potential discount under R907-65-11.

(2) The compensation charged shall be set forth in the agreement between the department and the telecommunications facility provider pursuant to R907-64.

(3) The annual compensation to be paid by each telecommunications facility provider which enters into an agreement with the department for longitudinal access shall be determined under the following formulas:

Land values by zone are translated into annual compensation rates (\$/mile) using the following formula:

Annual compensation rate per zone (\$/mile) = zonal land value (\$/mile)(from Table 2) x rate of return (currently 10%)

Total annual compensation shall then be calculated as follows:

Total annual compensation per zone = annual compensation rate per zone (\$/mile) x # of miles accessed.

For telecommunications facility providers seeking a route that accesses multiple zones, the above calculations shall be made for each zone then summed to calculate total annual compensation for the requested access route.

R907-65-9. Compensation for Use of Department Conduit.

(1) The land values set forth in Table 2 (and therefore the annual base compensation amounts) do not include the value of any spare conduit which the department owns. The department is authorized to offer use of and access to its spare conduit to telecommunications facility providers, provided the department determines the spare conduit is not and will not be needed for highway purposes and the department receives additional compensation for the use of and access to the spare conduit.

(2) Such additional compensation shall be fair and reasonable to the department and the telecommunications facility provider and shall be charged in a competitively neutral and nondiscriminatory manner to all similarly situated telecommunications facility providers. The department shall establish the amount of compensation for use of and access to the department's spare conduit by zone.

(3) Such additional compensation shall be subject to adjustment annually in the same manner as provided in R907-65-10.

(4) At least once every five years the department shall conduct an analysis to determine changes, if any, in the value of

its spare conduit. Whenever the department completes a market analysis and determines that value of its spare conduit has changed, the department shall apply its new values to each agreement thereafter executed by the department.

R907-65-10. Adjustments to Base Compensation Schedule for Annual Payments.

(1) The base compensation schedule for each calendar year after a year in which the department determines land values under R907-65-6 shall be adjusted effective January 1 of each such calendar year (each an "adjustment date"). The adjustment shall be calculated by multiplying the base compensation amount for the immediately preceding calendar year by a fraction. The numerator of the fraction shall be the "All Items, Consumer Price Index for All Urban Consumers (CPI-U) for the West (1982-84=100)," reported by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), published for the month of September immediately preceding the adjustment date in question. The denominator of the fraction shall be such index published for the next preceding month of September. The adjustment may result in an increase or decrease in the base compensation schedule.

(2) If the methodology for determining the index is changed by the issuer of the index, the department shall convert the index in accordance with the conversion factor published by the issuer of the index. If the index is discontinued or changed so that it is not practical to obtain a continuous measurement of price changes, the department shall replace the index with a comparable governmental index and apply the index chosen to all agreements which require annual adjustment to the base compensation.

(3) Except as provided in R907-65-11, each agreement for longitudinal access to the right-of-way of the interstate system with telecommunications facilities providers shall require that the rates of compensation during the first calendar year of the term of the agreement equal the base compensation schedule determined for that calendar year under this Rule (prorated if the term begins after January 1), taking into account any adjustments under R907-65-10(1).

(4) Except as provided in R907-65-11, each agreement for longitudinal access to the right-of-way of the interstate system with telecommunications facilities providers shall require an adjustment in the annual base compensation effective January 1 of each subsequent calendar year of the term (prorated for the last year of the term if it ends before December 31). The adjustment shall be calculated by multiplying the base compensation amount for the immediately preceding calendar year (annualized for partial calendar years during the term) by the fraction described in R907-65-10(1).

(5) It is the intent of this Rule that revisions to the base compensation schedule resulting from re-analysis of market conditions by the department pursuant to R907-65-5(4), R907-65-6(3), R907-65-7(2) and R907-65-9(4) shall apply only to agreements executed after the department completes and issues its revisions, and shall not apply to agreements executed prior to the revision. It also is the intent of this Rule that annual adjustments to the base compensation schedule due to inflation or deflation pursuant to R907-65-10(1) shall apply to every agreement under which annual compensation payments are required.

R907-65-11. Compensation Prior to Construction of Telecommunications Facilities.

(1) The department may charge compensation for the period of time between execution of the agreement and completion of construction at rates which are discounted from the full annual compensation rates determined under R907-65-8, R907-65-9 and R907-65-10 including no compensation prior to commencement of construction. The department also may agree

to the phasing of projects into clearly identified phases, with the compensation schedule structured based on the construction commencement and/or completion dates for each phase.

(2) If the department elects to discount compensation rates, it shall do so in a competitively neutral and nondiscriminatory manner for all similarly situated telecommunication facility providers.

R907-65-12. Lump Sum Monetary Compensation.

(1) The department is authorized to enter into agreements for longitudinal access to the right-of-way of the interstate system with telecommunications facility providers which offer, in lieu of annual compensation, one or more lump sum payments of monetary compensation. The agreement shall set forth the lump sum payment or payments due.

(2) Lump sum payments shall be calculated to be equivalent, on a present value basis, to annual compensation payments which would be required under R907-65-8, R907-65-9, R-907-65-10 and R907-65-11 over the same time period as that covered by each lump sum payment.

(3) For purposes of determining lump sum monetary compensation for longitudinal access to the right-of-way of the interstate system, the department shall use a discount rate equal to the yield (in percent per annum) on Moody's seasoned Aaa Corporate Bonds, as reported by the Federal Reserve Board through the Federal Reserve Statistical Release. The yield on Moody's Aaa Corporate Bonds reported for the first full month immediately prior to the date an agreement for lump sum monetary compensation is executed by the department shall be the discount rate applied for purposes of determining the amount of such lump sum monetary compensation.

(4) Each telecommunications facility provider which is to pay monetary compensation shall have the right to choose whether to pay it in one lump sum determined according to this Rule R907-65-12 or to pay it in annual installments. Unless the department otherwise agrees in writing, this choice shall be made before the agreement is signed, and the agreement shall set forth the choice made.

R907-65-13. In-Kind Compensation.

(1) The department is authorized to enter into agreements for longitudinal access to the right-of-way of the interstate system with telecommunications facility providers which offer, in lieu of or in addition to monetary compensation, in-kind compensation. In-kind compensation may include, without limitation, delivery to the department for its own uses and purposes of conduit, innerduct, dark fiber, access points, telecommunications equipment, telecommunications services, bandwidth and other telecommunications facilities. The agreement shall set forth the in-kind compensation.

(2) The department shall determine the present value of the in-kind compensation according to the methods set forth in R907-65-12. The department shall prepare an analysis setting forth its valuation at or before the time it executes the agreement. The valuation analysis need not be included in the agreement.

(3) The department shall value the in-kind compensation as follows:

(a) Facilities for Department Use Only. Electronic equipment, conduit, fiber and other telecommunications hardware and software contributed to the department shall be valued on a present value basis at the estimated, reasonable cost to the telecommunications facility provider of procuring and installing the same.

(b) Joint Trenching. The present value of the estimated, reasonable cost to the telecommunications facility provider of joint trenching for placing conduit, fiber and other facilities of both the provider (and its customers) and the department shall be proportionately allocated to the department as a component

of the present value of the in-kind compensation. The proportion allocated to the department shall equal the total estimated, reasonable cost of the trenching work multiplied by a fraction. The numerator of the fraction shall equal the amount of conduit and innerduct space to be contributed to the department under the agreement. The denominator of the fraction shall equal the total amount of conduit space the telecommunications facility provider is authorized to install under the agreement. Single duct conduit space shall be measured using the planned diameter of the conduit. Multi-duct conduit space shall be measured by summing the planned diameters of each innerduct in the conduit.

(c) Other Jointly Used Facilities. The present value of the estimated, reasonable cost to the telecommunications facility provider of providing any other telecommunications facility which is shared jointly by the provider and the department shall be proportionately allocated to the department as a component of the present value of the in-kind compensation. The department shall determine the proportion to be allocated to the department based on the percentage of use or benefit to which each party will be entitled under the agreement.

(d) Warranties; Maintenance and Operating Covenants. The department shall determine the present value of equipment warranties, warranties of conduit, fiber or other components, software warranties, maintenance covenants and operating covenants based on the reasonable, estimated cost of purchasing such warranties, maintenance and operating contracts from manufacturers or other third parties (if not already included in the cost to purchase the equipment, conduit, fiber, other components or software).

(e) Summation of In-Kind Values. The total present value of the in-kind compensation shall be the sum of the present values determined under subsections (a) through (d) above.

(4) The department shall require annual or lump sum monetary compensation (determined according to the methods set forth in R907-65-12), in addition to the in-kind compensation, if the present value of the in-kind compensation is less than the present value of the annual monetary compensation the department would require over the term of the agreement under R907-65-8, R907-65-9, R907-65-10 and R907-65-11. The amount of the annual or lump sum monetary compensation shall be the difference in such present values.

(5) The department may accept in-kind compensation with a present value in excess of the present value of annual monetary compensation payments which would be required under R907-65-8, R907-65-9, R907-65-10 and R907-65-11 if the telecommunications facility provider consents in writing and gives a written waiver and release of all claims and protections arising under federal or Utah law by reason of such excess value. The waiver and release shall be in form approved by the director.

(6) Before entering into an in-kind compensation agreement, the department shall obtain from the telecommunications facility provider its valuations of the in-kind compensation. The telecommunications facility provider may provide the department information on its costs in order to assist the department in determining in-kind compensation value. The department shall reasonably consider such valuation and cost information in making its determination, but is not bound by the valuation or cost information submitted.

R907-65-14. Multiple Providers in Same Trench.

(1) If the department enters into an agreement with two or more telecommunications facility providers, or with a consortium or other entity whose members, partners, venturers or other participants are two or more telecommunications facility providers, or if the department requires two or more telecommunications facility providers to share a single trench, then the agreement(s) shall require that the telecommunications

facility providers share the burden of the compensation owing to the department under the agreement(s) on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications facility provider from the trench, conduits and other telecommunications facilities to be installed under the agreement(s).

(2) The foregoing does not limit the right of the department to require all the participating telecommunications facility providers to bear joint and several liability for the obligations owing to the department under the agreement(s).

(3) Any agreement which requires sharing of the burden of compensation owing to the department shall provide the department the right to review and audit the books, records and contracts of or among the participating telecommunications facility providers to determine compliance or lack of compliance with R907-65-14(1).

**KEY: right-of-way, interstate highway system
November 16, 1999
Notice of Continuation September 22, 2008**

72-7-108

R912. Transportation, Motor Carrier, Ports of Entry.**R912-16. Special Mobile Equipment.****R912-16-1. Authority.**

This rule is authorized by Section 41-1a-231.

R912-16-2. Purpose.

The purpose of this rule is to provide registration exceptions for special mobile equipment.

R912-16-3. Definitions.

(1) Special Mobile Equipment exempt from registration include:

(a) Vehicles not designed to be operated or moved over the highways;

(b) Farm tractors;

(c) Off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, scrapers, tractors and trenchers; and

(d) Ditch digging apparatus.

(2) The following are no longer classified as special mobile equipment but are eligible for one-half exemption of fees required under Section 41-1a-1206:

(a) Concrete Pumps;

(b) Cranes performing crane services with a crane lift capacity of five tons or more; and

(c) Well boring trucks.

R912-16-4. Special Mobile Equipment Affidavit.

(1) All persons who operate or cause to be operated a special mobile equipment exempt from registration shall submit a completed special mobile equipment affidavit to the Department of Transportation, Motor Carrier Division.

(a) To be deemed complete an affidavit must be on the form provided by the Motor Carrier Division and all required fields filled in. Affidavits will be available at all Ports-of-Entry and State Tax Commission, Department of Motor Vehicles offices. Affidavits will be turned into a Port-of-Entry.

(b) The decision as to whether the vehicle is found to be a special mobile equipment exempt from registration, or not to be special mobile equipment, will be so noted on the affidavit.

(c) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times.

(d) Vehicles found to not be special mobile equipment shall register with the State Tax Commission prior to operating the vehicle on a public highway.

(e) Upon receipt of a denial of special mobile equipment, if the owner/operator wishes to appeal the decision of the Department, a petition may be filed with the Utah Department of Transportation, Motor Carrier Division, within 30 days.

(f) A response to an appeal from the Department will be made in writing within 30 days.

KEY: trucks, safety**August 16, 2000****Notice of Continuation August 12, 2010****41-1a-231****72-9-201**

R916. Transportation, Operations, Construction.**R916-3. DESIGN-BUILD Contracts.****R916-3-1. Purpose.**

(1) This rule is to provide guidance under which the Utah Department of Transportation (UDOT) may use the DESIGN-BUILD approach to contracting pursuant to Section 63G-6-502. DESIGN-BUILD seeks to provide: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

R916-3-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 6; Title 63G, Chapter 3; and Section 72-1-201.

R916-3-3. Policy.

(1) UDOT may use, where determined appropriate by the Executive Director, the DESIGN-BUILD method of project delivery. When DESIGN-BUILD is used, UDOT shall enter into a contract with a single entity to provide both engineering/design services, construction services, and/or maintenance services pursuant to a UDOT provided scope of work statement. DESIGN-BUILD is not recommended for every project. The use of the DESIGN-BUILD method may be determined by the individual needs and merits of the project.

R916-3-4. Pre-qualification.

(1) UDOT may issue a Request for Qualifications, RFQ, soliciting qualification statements from contractors wishing to submit proposals on a UDOT design-build project. The RFQ shall state the minimum and maximum number of highly qualified proposers that will be invited to submit final proposals.

(2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including construction experience; design experience; technical competence; capability to perform, including financial, manpower and equipment resources; experience in other design-build projects; and past performance.

(3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ. Failure to achieve at least two qualified proposers shall necessitate the resolicitation of the project.

R916-3-5. Preparation of Specifications.

(1) UDOT may use any method of specifying construction items which the Executive Director determines is in the best interest of UDOT. Engineering firms who participated in preparation of specifications used in the procurement for a portion (but not all) of the project shall have the right to participate as proposers.

R916-3-6. Request for Proposals (RFP).

(1) The pre-qualified proposers shall be invited to submit proposals on the designated design-build project pursuant to an RFP. UDOT may elect to ask for initial proposals followed by discussions and best and final offers, or may elect to award the contract without discussions or best and final offers. The RFP may ask for proposals based on a stipulated sum.

(2) UDOT may award a stipulated fee to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the fee (if any) shall be identified in the RFP.

(3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP. The RFP may require proposals to meet a mandatory technical level, and may include a request for alternative proposals.

(4) Technical solutions/design concepts contained in

proposals shall be considered proprietary information unless a stipulated fee is paid.

R916-3-7. Evaluation of Proposals and Discussions with Proposers.

(1) UDOT shall evaluate the technical and price proposals separately, in accordance with the evaluation factors set forth in the RFP.

(2) UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers.

(3) If discussions are held, best and final offers will be requested. If best and final offers are requested they will be the basis for award and will be evaluated as stated in the RFP.

R916-3-8. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Sections 63G-6-504 through 507 to be unnecessary to protect the State.

(2) The Executive Director shall have the right to reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Sections 63G-6-504 through 507, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-3-9. Required Contract Clauses.

The design-build contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-60, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-3-10. Award and Contract.

The basis for award shall be stated in the RFP. Award may be based on any of the following approaches (all of which shall be deemed to constitute award to the lowest responsible bidder as such term is used in Utah Code Section 63G-6-502:

(1) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.

(2) Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(3) If the RFP provides for a stipulated sum, award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

There is no requirement that a contract be awarded. Following award a contract shall be executed and notice given to the successful design-build proposer to proceed with the work.

**KEY: construction, contracts, DESIGN-BUILD, highways
December 31, 1996 63G-6-502
Notice of Continuation November 29, 2006**

R920. Transportation, Operations, Traffic and Safety.**R920-1. Manual of Uniform Traffic Control Devices.****R920-1-1. Adoption by Reference.**

Adopted by reference is the Manual of Uniform Traffic Control Devices (MUTCD). This manual was approved by the Federal Highway Administrator as the National standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a) and 23 CFT 1204.4.

KEY: traffic control**1987****41-6a-301****Notice of Continuation August 13, 2007**

R920. Transportation, Operations, Traffic and Safety.**R920-51. Safety Regulations for Railroads.****R920-51-1. Adoption of Federal Regulations.**

Safety Regulations for Railroads, Title 49 Federal Railroad Administration, Department of Transportation is adopted by reference as it applies to all private, common, and contract carriers by rail in Interstate and/or Intrastate Commerce.

R920-51-2. Part 200 - Informal Rules of Practice for Passenger Service.

- A. General
- B. Definition
- C. Application
- D. Objections
- E. Hearings
- F. Orders, approvals and determinations
- G. Publication

R920-51-3. Part 201 - Formal Rules of Practice for Passenger Service.

- A. General
- B. Definitions
- C. Scope of regulations
- D. Application
- E. Notice of hearing
- F. Notification by interested persons
- G. Presiding officer
- H. Direct testimony submitted as written documents
- I. Mailing address
- J. Inspection and copying of documents
- K. Ex parte communications
- L. Prehearing conference
- M. Final agenda of the hearing
- N. Determination to cancel the hearing
- O. Rebuttal testimony and new issues of fact in final agenda
- P. Waiver of right to participate
- Q. Conduct of the hearing
- R. Direct testimony
- S. Cross-examination
- T. Oral and written arguments
- U. Recommended decision, certification of the transcript, and submission of comments in the recommended decision.

R920-51-4. Railroad Safety Enforcement Procedures.

- A. Subpart A - General
- B. Subpart B - Hazardous Materials Penalties

R920-51-5. Part 210 - Railroad Noise Emission Compliance Regulations.

- A. Subpart A - General Provisions
- B. Subpart B - Inspection and testing

R920-51-6. Part 211 - Rules of Practice.

- A. Subpart A - General
- B. Subpart B - Rulemaking Procedures
- C. Subpart C - Waivers
- D. Subpart D - Emergency Orders
- E. Subpart E - Miscellaneous Safety - Related Proceedings and Inquiries
- F. Subpart F - Interim Procedures for the Review of Emergency Orders

R920-51-7. Part 212 - State Safety Participation Regulations.

- A. Subpart A - General
- B. Subpart B - State/Federal Roles
- C. Subpart C - State Inspection Personnel
- D. Subpart D - Grants in Aid

R920-51-8. Part 213 - Track Safety Standards.

- A. Subpart A - General
- B. Subpart B - Roadbed
- C. Subpart C - Track Geometry
- D. Subpart D - Track Structure
- E. Subpart E - Track Appliances and Track Related Devices
- F. Subpart F - Inspections

R920-51-9. Part 215 - Railroad Freight Car Safety Standards.

- A. Subpart A - General
- B. Subpart B - Freight Car Components
- C. Subpart C - Restricted Equipment
- D. Subpart D - Stenciling

R920-51-10. Part 216 - Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment.

- A. Subpart A - General
- B. Subpart B - Special Notice for Repair
- C. Subpart C - Emergency Order - Track

R920-51-11. Part 217 - Railroad Operating Rules.

- A. Subpart A - General

R920-51-12. Part 218 - Railroad Operating Rules.

- A. Subpart A - General
- B. Subpart B - Blue Signal Protection of Workmen
- C. Subpart C - Protection of Trains and Locomotives

R920-51-13. Part 220 - Radio Standards and Procedures.

- A. Subpart A - General
- B. Subpart B - Radio Procedures
- C. Subpart C - Train Orders

R920-51-14. Part 221 - Rear End Marking Device - Passenger, Commuter and Freight Trains.

- A. Subpart A - General
- B. Subpart B - Marking Devices

R920-51-15. Part 223 - Safety Glazing Standards - Locomotives, Passenger Cars and Caboose.

- A. Subpart A - General
- B. Subpart B - Specific Requirements

R920-51-16. Part 225 - Railroad Accidents/Incidents: Reports Classification, and Investigations.

- A. Purpose
 1. Applicability
 2. Definitions
 3. Public examination and use of reports
 4. Telephonic reports of certain accidents/incidents
 5. Reporting of accidents/incidents
 6. Late reports
 7. Accident/incidents not to be reported
 8. Doubtful cases
 9. Primary groups of accidents/incidents
 10. Forms
 11. Joint operations
 12. Recordkeeping
 13. Retention of records
 14. Penalties

R920-51-17. Part 228 - Hours of Service of Railroad Employees.

- A. Subpart A - General
- B. Subpart B - Records and Reporting
- C. Subpart C - Construction of Employee Sleeping

Quarters

R920-51-18. Part 229 - Railroad Locomotive Safety Standards.

- A. Subpart A - General
- B. Subpart B - Inspections and Tests
- C. Subpart C - Safety Requirements
- D. Subpart D - Design Requirements

R920-51-19. Part 230 - Locomotive Inspection.

- A. Steam Powered Locomotives

R920-51-20. Part 231 - Railroad Safety Appliance Standards.

- A. Box and other house cars
- B. Hopper cars and high-side gondolas with fixed ends
- C. Drop-end high-side gondola cars
- D. Fixed-end low-side gondola and low-side hopper cars
- E. Drop-end low-side gondola cars
- F. Flat cars
- G. Tank cars with side platforms
- H. Tank cars without side sills and tank cars with short side sills and end platforms
- I. Tank cars without end sills
- J. Caboose cars with platforms
- K. Caboose cars without platforms
- L. Passenger-train cars with wide vestibules
- M. Passenger-train cars with open-end platforms
- N. Passenger-train cars without end platforms
- O. Steam locomotives used in switching service
- P. Specifications common to all steam locomotives
- Q. Cars of special construction
- R. Definition of "Right" and "Left"
- S. Variation in size permitted
- T. Tank cars without under frames
- U. Unidirectional passenger-train cars adoptable to van-type semi-trailer use
- V. Box and other house cars with roofs, 16 feet 10 inches or more above top of rail
- W. Track motorcars (self-propelled 4-wheel cars which can be removed from the rails by men)
- X. Pushcars
- Y. Box and other house cars without roof hatches
- Z. Box and other house cars with roof hatches
- AA. Road locomotives with corner stairways
- AB. Locomotives used in switching service

R920-51-21. Part 232 - Railroad Power Brakes and Drawbars.

- A. Power brakes; minimum percentage
- B. Drawbars; standard height
- C. Power brakes and appliances for operating power brake systems
- D. Rules for Inspection, Testing and Maintenance of Air Brake Equipment
- E. General rules; locomotives
- F. Train air brake system tests
- G. Initial terminal road train airbrake tests
- H. Road train and intermediate terminal train airbrake tests
- I. Inbound brake equipment inspection
- J. Double heading and helper service
- K. Running tests
- L. Freight and passenger train car brakes
- M. Appendix-Specifications and requirements for power brakes and appliances for operating power-brake systems for freight service

R920-51-22. Part 233 - Signal Systems Reporting Requirements.

- A. Scope
- 1. Application
- 2. Accidents resulting from signal failure
- 3. Signal failure reports
- 4. Annual reports
- 5. Civil penalty
- 6. Criminal penalty

R920-51-23. Part 235 - Instructions Governing Applications for Approval of a Discontinuance or Material Modification for a Signal System.

- A. Scope
- 1. Discontinuance or modification requiring filing of application
- 2. Discontinuance or modification not requiring filing of application
- 3. Form of application
- 4. Contents of application
- 5. Additional required information-prints
- 6. Filing procedure
- 7. Notice
- 8. Protests

R920-51-24. Part 236 - Installation, Specification, Maintenance, and Repair of Systems, Devices and Appliances.

- A. Applicability of this part, relief and instructions governing applications for relief
- B. Subpart A - Rules and Instructions: All Systems
- C. Subpart B - Automatic Block Signal System
- D. Subpart C - Interlocking
- E. Subpart D - Traffic Control Systems
- F. Subpart E - Automatic Train Stop, Train Control and Cab Signal Systems
- G. Subpart F - Dragging Equipment and Slide Detectors and Other Similar Protective Devices
- H. Subpart G - Definitions

KEY: railroads, safety regulation

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54-4-14

R986. Workforce Services, Employment Development.**R986-100. Employment Support Programs.****R986-100-101. Authority.**

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

- (a) Food Stamps
- (b) Family Employment Program (FEP)
- (c) Family Employment Program Two Parent (FEPTP)
- (d) Refugee Resettlement Program (RRP)
- (e) Working Toward Employment (WTE)
- (f) General Assistance (GA)
- (g) Child Care Assistance (CC)
- (h) Emergency Assistance Program (EA)
- (i) Adoption Assistance Program (AA)
- (j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

- (1) "AA" Adoption Assistance Program
- (2) "ALJ" Administrative Law Judge
- (3) "CC" Child Care Assistance
- (4) "CFR" Code of Federal Regulations
- (5) "DCFS" Division of Children and Family Services
- (6) "DWS" Department of Workforce Services
- (7) "EA" Emergency Assistance Program
- (8) "FEP" Family Employment Program
- (9) "FEPTP" Family Employment Program Two Parent
- (10) "GA" General Assistance
- (11) "INA" Immigration and Nationality Act
- (12) "IPV" intentional program violation
- (13) "ORS" Office of Recovery Service, Utah State Department of Human Services
- (14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
- (15) "RRP" Refugee Resettlement Program
- (16) "SNB" Standard Needs Budget
- (17) "SSA" Social Security Administration
- (18) "SSDI" Social Security Disability Insurance
- (19) "SSI" Supplemental Security Insurance
- (20) "SSN" Social Security Number
- (21) "TANF" Temporary Assistance for Needy Families
- (22) "UCA" Utah Code Annotated
- (23) "UI" Unemployment Compensation Insurance
- (24) "USCIS" United States Citizenship and Immigration Services.
- (25) "VA" US Department of Veteran Affairs
- (26) "WTE" Working Toward Employment Program
- (27) "WIA" Workforce Investment Act
- (28) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;

(e) education to learn English as a second language;

(f) applied technology training;

(g) employment skills training;

(h) WSL; or

(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except food stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete

his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for food stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The

state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the

Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and

evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise

protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps in which all household members are elderly or disabled as defined by food stamp regulations, and the household has no earned income, must report the following material changes to the local office within ten days of the day the change becomes known by a household member:

(i) change in income source, both unearned and earned;

(ii) change of more than \$50 in gross monthly unearned income;

(iii) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;

(iv) change in household size or marital status;

(v) change in residence and resulting change in shelter costs;

(vi) gain of a licensed vehicle;

(vii) change in available assets including an unlicensed vehicle. A household under this subsection need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of \$3,000;

(viii) change in the legal obligation to pay child support; and

(b) households receiving food stamps that do not meet the requirements of paragraph (2)(a) of this section must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 130% of federal poverty level;

(ii) a change of address; and

(iii) if an ABAWD's work hours fall below 20 hours per week.

(c) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address; and

(iii) if the only eligible child leaves the household and the household receives FEP, FEPTP or AA.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraphs (2)(b) and (c) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document received after 5 p.m., including documents received by Fax or email, will be considered received the next day Department offices are open.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later

discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV's).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

- (a) knowingly making false or misleading statements;
- (b) misrepresenting, concealing, or withholding facts or information;
- (c) posing as someone else;
- (d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;
- (e) not reporting a material change as required by and in accordance with these rules; and
- (f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the

dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;
 (b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the client willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the post office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPV's in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are usually scheduled as telephone hearings.

(6) If the client prefers an in-person hearing the client must contact the ALJ assigned to hear the case in advance of the hearing and request that the hearing be converted to an in-person hearing. An in-person hearing is conducted in one of the following ways, at the option of the client:

(a) the client can request that the hearing be conducted in the office of the ALJ and appear personally before the ALJ, but the Department representative and Department witnesses will be allowed to participate by telephone; or

(b) the client can participate from the local Employment Center with the witnesses and Department employees who work in that particular Employment Center. The ALJ and any Department employees or witnesses who are in another location will participate from that location or locations by telephone.

(7) The Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

- (1) The ALJ will be assured that the interpreter:
 - (a) understands the English language; and
 - (b) understands the language of the client or witness for whom the interpreter will interpret.
- (2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.
- (3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.
- (4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

- (1) All interested parties will be notified by mail at least 10 days prior to the hearing.
- (2) Advance written notice of the hearing can be waived if the client and Department agree.
- (3) The notice shall contain:
 - (a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;
 - (b) the legal issues or reason for the hearing;
 - (c) the consequences of not appearing;
 - (d) the procedures and limitations for requesting rescheduling; and
 - (e) notification that the client can examine the case file prior to the hearing.
- (4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.
- (5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.
- (6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.
- (7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

- (1) Hearings are not open to the public.
- (2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.
- (3) Representatives from the Department or other state agencies may be present.
- (4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.
- (5) All issues relevant to the appeal will be considered and decided upon.
- (6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.
- (7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

- (a) The request must be received prior to the hearing.
- (b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.
- (c) The party making the request must show cause for the request.
- (d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

- (a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,
- (b) requesting and participating in a hearing, or
- (c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default on the same grounds.

(6) If a request to set aside the default or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have 30 days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District

Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

KEY: employment support procedures

June 14, 2007

Notice of Continuation September 8, 2010

35A-3-101 et seq.

35A-3-301 et seq.

35A-3-401 et seq.

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

- (iv) a licensed Advanced Practice Registered Nurse; or
- (v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit

and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as

income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to

be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non-cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial

assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the

client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

- (a) the client's present emotional health and history;
- (b) the intensity and probable duration of the resulting impairment;
- (c) the degree of cooperation required; and
- (d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

- (a) an expected outcome;
- (b) an anticipated completion date;
- (c) the number of participation hours agreed upon per week; and
- (d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

- (i) promptly register for work and commence a search for employment for a specified number of hours each week; and
- (ii) regularly submit a report to the Department on:
 - (A) how much time was spent in job search activities;
 - (B) the number of job applications completed;
 - (C) the interviews attended;
 - (D) the offers of employment extended; and
 - (E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the

employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the

family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by \$100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the \$100 reduction month, financial assistance will be terminated beginning the month following the \$100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the

client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is

included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s) home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to

be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
- (b) the likelihood that the applicant will obtain immediate full-time employment;
- (c) the applicant's housing stability; and
- (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must:

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial

assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will

count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the

36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to

work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is

counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every

two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the

net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

Household Size	Payment Amount
1	\$288
2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as

follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month

a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months

of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-247. Utah Back to Work Pilot Program (BWP).

(1) BWP is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible unemployment insurance (UI) claimant. To be eligible, a UI claimant must:

(a) be currently receiving UI benefits and have received at least one week of paid UI benefit. The waiting week is not considered a "paid" benefit for the purposes of this section;

(b) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(c) have at least 10 weeks of regular UI benefits remaining on his or her claim. The 10 weeks do not include Extended Benefits under 35A-4-402 or Emergency Unemployment Compensation (EUC) benefits as defined by the UI division;

(d) be the parent of at least one minor dependent child and be contributing to the financial support of that child or children;

(e) have UI base period wages of not more than \$7,800 in any quarter of the base period;

(f) have not worked for the employer where the claimant is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the BWP program; and

(g) have not previously participated in the BWP or BWY program.

(2) The Utah Back to Work Youth Program (BWY) provides short term subsidized employment for a maximum of three months to unemployed youth 18-24 years of age. BWY youth must be legally eligible to work in the U.S. and be unemployed but do not need to be receiving or eligible to receive UI benefits. BWY youth do not need to be a parent but must meet the requirement of subsection (1)(f) and have not participated in the BWP or BWY program before.

(3) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" under the "Hiring Incentives to Restore Employment Act" of 2010 which "means any employer other than the United States, any State, or any political subdivision" or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$9 per hour. Commission only jobs may qualify if the employer guarantees \$9 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the claimant with at least 35 hours work per week; and

(g) does not hire the claimant for temporary or seasonal work.

(4) Once it has been verified that a claimant has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(5) BWP and BWY will continue for as long as funding is available.

R986-200-250. Basic Education Training Provider.

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

R986-200-251. Types of Basic Education Training Providers and Approval Requirements.

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;

- (a) a birth certificate,
- (b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:
 - (i) any matters involving an alleged sexual offense;
 - (ii) any matters involving an alleged felony or class A misdemeanor drug offense; or
 - (iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

- (a) have been in business in Utah for at least one year;
- (b) meet all state and local licensing requirements;
- (c) have a satisfactory record with the Better Business Bureau;
- (d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:
 - (i) balance sheet, income statement and a statement of changes in financial position;
 - (ii) copy of the most recent annual business audit; or
 - (iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

- (a) program completion rates for all individuals enrolled;
- (b) the type of certification students completing the program will obtain;
- (c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of

this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

R986-200-252. Renewal and Revocation of Approval for Training Providers.

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The

notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

KEY: family employment program

July 1, 2010

35A-3-301 et seq.

Notice of Continuation September 8, 2010

R986. Workforce Services, Employment Development.**R986-300. Refugee Resettlement Program.****R986-300-301. Authority for the Refugee Resettlement Program (RRP) and Other Applicable Rules.**

(1) The Department provides services to eligible refugees pursuant to 45 CFR 400 and 45 CFR 401 et seq., (2000) which are incorporated herein by reference.

(2) The Department has opted to operate a Publicly-Administered Refugee Cash Assistance Program as provided in 45 CFR 400.65 through 400.68.

(3) Rule R986-100 applies to RRP.

(4) Applicable provisions of R986-200 apply to RRP except as noted in this rule.

R986-300-302. Refugee Resettlement Program (RRP).

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.

(3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

(4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

(5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;

(ii) the client is required to work contrary to his membership in the union governing that occupation;

(iii) the employment was deemed a risk to the health or safety of the worker;

(iv) the employment lacked Workers' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

R986-300-303. Eligibility, Income Standards, and Amount of Assistance.

(1) An applicant for RRP must provide proof, in the form of documentation issued by the USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;

(f) a victim of trafficking;

(g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through (f) of this section; or

(h) admitted for permanent residence under Special Immigrant Visas and provided benefits under federal law and in accordance with that federal law.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are single parents, two parents with one parent who is incapacitated, or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP and will be paid financial assistance under that program. All other refugees, including refugee households with two able-bodied parents and at least one dependent child, will be paid financial assistance under the RRP and must meet the federal RRP participation requirements.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility but the amount of financial assistance payment will be made as if the household had one less member.

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.

(7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

R986-300-304. Participation Requirements.

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services;

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with employment or employment related services.

R986-300-305. Failure to Comply with an Employment Plan.

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no reduction period as provided in R986-200-212(2),

(b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, food stamps and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

R986-300-306. Time Limits.

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

KEY: refugee resettlement program
August 26, 2009
Notice of Continuation September 8, 2010

35A-3-103

R986. Workforce Services, Employment Development.**R986-400. General Assistance.****R986-400-401. Authority for General Assistance (GA) and Applicable Rules.**

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who have a physical or mental health impairment that prevents basic work activities in any occupation. This means that the applicant or client is unable to work any number of hours at all in any occupation.

(2) The impairment must be expected to last at least 60 days after the date of application.

(3) Drug addiction and/or alcoholism alone is insufficient to meet the impairment requirement for GA as defined in Public Law 104-121.

(4) Married couples meet the impairment criteria and time limits on an individual basis. If the household includes an ineligible spouse, the income and assets of the ineligible spouse must be counted when determining the eligibility of the household and the ineligible spouse will not be included in the financial payment. The household can consist of any combination of impaired, non-impaired, short term disabled, or long term disabled as long as at least one spouse meets the eligibility requirements.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330. An individual whose SSI benefits are suspended because he or she has not attained U.S. citizenship, may be eligible for GA if the individual actively pursues U.S. citizenship to regain SSI eligibility.

R986-400-403. Proof of Impairment.

(1) An applicant must provide current medical evidence of an impairment that prevents basic work activities in any occupation due to a physical or mental health condition and that the impairment is expected to last at least 60 days from the date of application. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102. If an applicant has been approved for SSI/SSDI, and is waiting for the

first check, no further medical evidence of impairment is necessary. Verification and evidence of social security approval must be included in the case record.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

R986-400-404. Participation Requirements.

(1) All GA clients are required to meet with an employment counselor and sign the General Assistance Agreement Form within 30 days after the initial financial benefit has been issued.

(2) The requirement to complete an assessment and employment plan is limited to clients with impairments expected to last 12 months or longer.

(3) If the impairment is expected to last 12 months or longer, the client must apply for SSI/SSDI benefits.

(4) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage that meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, SSI/SSDI, VA Benefits, and Workers' Compensation.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI or SSDI benefits may be provided with GA financial assistance pending a determination on the application for SSI or SSDI. If the client is applying for SSI, he or she must sign an "Agreement to Repay Interim Assistance" form and agree to reimburse, or allow SSA to reimburse, the state of Utah for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI or SSDI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI or SSDI denial at least to the Social Security ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

(4) If a client's SSI or SSDI benefits have been terminated due to a physical or mental health condition, the client is ineligible unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating

through no fault of his or her own or failed to participate for reasons that are reasonable and compelling and may include reasons like verified illness or extraordinary transportation problems.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must resolve the reason for the termination and participate to the maximum extent possible in all of the required activities of the employment plan. The client does not need to reapply if he or she resolves the reason for termination by the end of the month following the termination;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third and subsequent time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-407. Income and Assets Limits and Amount of Assistance.

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt;

(c) one vehicle, with a maximum of \$8,000 equity value, is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of \$8,000. Beginning October 1, 2007, all motorized vehicles will be exempt.

(2) The financial assistance payment level is set by the Department and available for review at all Department local offices.

R986-400-408. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 12 months out of a rolling 60-month period. Any month in which a client received a full or partial GA financial assistance payment count toward the 12 month limit.

(a) A client with a short term impairment that prevents basic work activities in any occupation lasting at least 60 days from the date of application but less than 12 months can receive up to six months of GA financial benefits in a rolling 12 month period. Clients are limited to a total of 12 months of financial assistance within a rolling 60-month period.

(b) A client with a long term impairment that prevents basic work activities in any occupation and the impairment is expected to last 12 months or more, can receive a total of 12 months of GA financial benefits in a rolling 60 month period.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

KEY: general assistance

September 22, 2009

Notice of Continuation September 8, 2010

35A-3-401

35A-3-402

R986. Workforce Services, Employment Development.**R986-500. Adoption Assistance.****R986-500-501. Authority for Adoption Assistance (AA) and Other Applicable Rules.**

- (1) The Department administers AA pursuant to the authority granted in Section 35A-3-308.
- (2) The provisions of R986-100 apply to AA.
- (3) The provisions of R986-200 apply to AA, except as noted in this rule.

R986-500-502. General Provisions.

- (1) AA may be provided to a birth parent who was or would have been the caretaker of a child relinquished for adoption.
- (2) The relinquishment must have been voluntary. Birth parents who have had their parental rights terminated are not eligible for AA.
- (3) The adoption must have met the requirements of Section 78B-6-120.
- (4) AA financial assistance can be provided to a woman who is in her third trimester of pregnancy if she is planning to relinquish custody of the child for the purpose of adoption and if she is otherwise eligible.
- (5) A parent must apply for AA no later than the end of the second month after the month of relinquishment. Proof of relinquishment is required.
- (6) Relinquishment can be made for any minor child, however a child age 12 or older must agree to the relinquishment.
- (7) The Department will coordinate services to assist the client in:
 - (a) receiving appropriate educational and occupational assessment and planning, including enrolling in appropriate education or training programs, which includes high school completion and adult education programs;
 - (b) enrolling in programs that provide assistance with job readiness, employment counseling, finding employment, and work skills;
 - (c) finding suitable housing;
 - (d) receiving medical assistance, under Title 26, Chapter 18, Medical Assistance Act, if the client is otherwise eligible; and
 - (e) receiving counseling and other mental health services.
- (8) If a birth parent relinquishes custody of a child, and before the adoption is finalized, takes back custody of the child, the parent is no longer eligible for AA.
- (9) The rule regarding minor parents found at R986-200-213 applies if the parent seeking AA is a minor.
- (10) If the minor parent seeking AA is living with her parent(s), or the parent(s) of the father of the child being relinquished, the FEP rule for counting the income of the household found in R986-200-242 applies.

R986-500-503. Services Available to All Pregnant Clients.

- (1) The Department will publish and make available to all pregnant clients an easy-to-understand adoption information packet which:
 - (a) contains information about the public and private organizations that provide adoption assistance specific to the geographical location of the client;
 - (b) lists the names, addresses, and telephone numbers of licensed child placement agencies and licensed attorneys who place children for adoption;
 - (c) explains that private adoption is legal and that the law permits adoptive parents to reimburse the costs of prenatal care, childbirth, neonatal care, and other expenses related to pregnancy; and
 - (d) describes the services and supports available to the client from the Department and other state agencies.

(2) The Department will refer the client for appropriate prenatal medical care, including maternal health services provided under Title 26, Chapter 10, Family Health Services.

(3) The Department will inform the client of free counseling about adoption from licensed child placement agencies and licensed attorneys.

R986-500-504. AA Financial Assistance Eligibility and Amount.

- (1) Eligibility and participation are determined by R986-200 except:
 - (a) the employment plan must contain the requirement that the client enroll in high school or an alternative to high school, if the client does not have a high school diploma;
 - (b) the child support enforcement provisions do not apply for the child being relinquished; and
 - (c) one vehicle with a maximum of \$8,000 equity value is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of \$8,000. Beginning October 1, 2007 all motorized vehicles will be exempt.
- (2) If there are other eligible children living in the household assistance unit, the household will receive a monthly supplemental financial AA payment equal to the additional amount the household would have received had the parent(s) not relinquished the child.
- (3) If there are no eligible children living in the household, financial AA will be provided equal to a household size of one even if both birth parents are living in the household.

R986-500-505. Time Limits for AA.

- (1) Financial AA can be provided up to a maximum of 12 consecutive months from the date of relinquishment.
- (2) Payment of financial assistance for part of a month counts as a whole month when calculating the 12 month time limit.
- (3) No extensions or exceptions to the time limit will be allowed.
- (4) A birth parent who is determined eligible for adoption assistance and becomes ineligible during the 12 month payment period may reestablish eligibility up to the twelfth month if the parent reapplies during the 12 month period.
- (5) Months during which no payment of financial assistance was made due to ineligibility or disqualification count toward the 12 month time limit.
- (6) There is no limit to the number of times a parent can apply for or be found eligible for AA, however months during which a client receives AA prior to relinquishment count toward the 36 month time limit for FEP and FEPTP found in R986-200-217. Months when a client receives AA after relinquishment count toward the 36 month time limit if the client is otherwise eligible to receive FEP or FEPTP because there are eligible children in the home.

R986-500-506. Safeguarding Records.

Records pertaining to the adoption will not be kept in the client's case file but will be sent to the Department of Adoption Assistance Specialist and kept private. This includes verification of relinquishment and anything that would identify any agency, organization, or individual assisting with the adoption.

**KEY: adoption assistance
September 29, 2008**

Notice of Continuation September 8, 2010

35A-3-114

R986. Workforce Services, Employment Development.**R986-600. Workforce Investment Act.****R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply. Although a WIA applicant must complete an application as provided in R986-100-111, not all of the information requested in that rule is necessary for WIA applicants.

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adult, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, supportive services, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers three levels of service for adults, youth and dislocated workers:

- (1) core services,
- (2) intensive services,
- (3) training services.

R986-600-605. Core Services.

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

- (a) providing the following informational resources:
 - (i) outreach, intake, and orientation to, and information about, available services, including resource and referral

services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education services.

(iv) performance measures with respect to the one-stop delivery system;

(b) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

R986-600-606. Intensive Services.

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed, registered for services with the Department, and who desire employment; or

(b) who are employed, registered for services with the Department, meet the self-sufficiency definition, and need to improve or change their current employment status. Self-sufficiency for WIA is defined as:

(i) declared income from the customer's primary job is less than the WIA income eligibility standards as found in R986-600-617(4) for a family of eight; or

(ii) the customer is at risk of losing his or her current level of income as evidenced by:

(A) a notice of lay-off or closure,

(B) the inability to retain his or her current job due to changes such as the requirement for increased skills,

(C) technological or industry changes, or

(D) the potential future income from the customer's primary job will be less than the WIA income eligibility standards for a family of eight.

(2) Intensive services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(3) Intensive services for adults, dislocated workers and youth consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621.

(c) short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training,

(d) case management, counseling and career planning, and

(e) supportive services.

(4) Additional intensive services available to youth include:

(a) leadership development,

(b) mentoring,

(c) comprehensive guidance and counseling, and

(d) follow-up services.

R986-600-607. Training Services.

(1) If the client establishes appropriateness, training services are available to adults and dislocated workers:

(a) who are unable to achieve self-sufficiency through intensive services.

(2) Training services include employment related education and work site learning.

(3) Training services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(4) Training services for youth consist of;

(a) tutoring,

(b) alternative school,

(c) occupational skills training,

(d) paid and unpaid internships, and/or

(e) summer youth employment opportunities.

R986-600-608. Eligibility Requirements, General Definition.

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult (18 and over) and dislocated workers. Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

R986-600-609. Citizenship, Alienage and Residency Requirements.

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, which includes youth services.

R986-600-611. Income Eligibility Requirements.

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements.

(3) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-612. Prioritization Factors Used for Determining Eligibility.

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department.

(2) When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.

(4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs (adult and youth).

(5) Veterans will receive priority over non-veterans.

R986-600-613. Categorical Income Eligibility.

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule except as provided in rule R986-600-611(3).

R986-600-614. How to Determine Who Is Included in the Family.

Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the previous six months, not including the current month. Family size must be verified only if the Department is using family income to determine low-income eligibility for adult or youth services.

(1) A customer can be considered a "family" of one, if the customer is:

(a) age 18 or older and has been living on his or her own for the last six months, not including the current month;

(b) emancipated by marriage or court order;

(c) an adult child, age 22 or older, living with his or her parents and applying on his or her own behalf;

(d) in the custody of the state at the time eligibility is determined, or

(e) living alone or with a family and has a verifiable disability that is a substantial barrier to employment.

(2) A 'family' is generally described as two or more persons related by blood, marriage, or decree of court, living in a single residence. A dependent child is a child the parent or guardian claimed as a dependent of the parent or guardian's tax return.

(a) Family members included in the income determination:

(i) A husband and wife and dependent children age 21 and under;

(ii) A parent or legal guardian and dependent children age 21 and under; or

(iii) A husband and wife, if there are no dependent children.

(b) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(c) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

R986-600-615. Assets.

Assets are not counted when determining eligibility for

WIA services.

R986-600-616. Countable Income.

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

- (a) money, wages, and salaries before any deductions,
- (b) net receipts from self-employment, including farming,
- (c) Job Corps payments to participants,
- (d) railroad retirement,
- (e) strike benefits from union funds,
- (f) workers' compensation benefits,
- (g) veterans' payments, except disability payments,
- (h) training stipends,
- (i) alimony,
- (j) military family allotments or other regular support from an absent family member or someone not living in the household,
- (k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,
- (l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.
- (m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),
- (n) dividends,
- (o) interest,
- (p) net rental income,
- (q) net royalties, including tribal payments from casino royalties,
- (r) periodic receipts from estates or trusts, and
- (s) net gambling or lottery winnings.

(2) Excludable income, which is income that is not counted, is:

- (a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, WTE, SSI, RRP, or Emergency Assistance,
- (b) payments received from any governmental unit for adoption assistance,
- (c) child support,
- (d) unemployment compensation,
- (e) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,
- (f) SSDI, and veterans disability payments,
- (g) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some work-study programs,
- (h) foster care payments,
- (i) tax refunds,
- (j) gifts,
- (k) loans,
- (l) lump-sum inheritances,
- (m) one-time insurance payments or compensation for injury,
- (n) Earned Income Credit from the IRS,
- (o) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,
- (p) benefit payments to veterans under 38 U.S.C 4212, part 3,

(q) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash

benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(r) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually. If necessary, the Department can make a best estimate or year-to-date estimate based on available records.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is an individual who meets, or has met within the past 24 months, one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, including military service, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any major layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive available services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated

worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

- a. Unemployment Insurance records;
- b. An individual layoff letter;
- c. Rapid Response Unit analysis or review;
- d. Public announcements of layoff;
- e. If no other means of verification are available, the employer can provide verification; or
- f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

- (a) search for employment.
- (b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;
- (c) obtain education or training necessary to obtain employment;
- (d) obtain medical, mental health, or substance abuse

treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and/or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Requirements of an Employment Plan for Youth.

(1) The focus of services for youth is for youth aged 14 to 21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The goal of employment for youth is:

- (a) placement in employment or postsecondary education;
- (b) attainment of a degree or certificate; or
- (c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Education and Training and Support Services as Part of an Employment Plan.

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to achieve self-sufficiency;

(b) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(c) the client is willing to complete the education or training as quickly as is reasonable;

(d) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(e) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to

participate in activities authorized under this title (WIA).

R986-600-624. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

R986-600-651. Definitions.

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

R986-600-652. Determining Eligibility for Training Providers.

(1) Training providers are automatically eligible if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) all names under which the provider operates or is known, the mailing address, physical address, telephone number, and email address (if available) of the training facility and the number of years the provider has been in business;

(b) a copy of the provider's student grievance procedure;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the provider must provide to the Department:

(i) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(ii) the name of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(iii) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity identified in subparagraph (2)(g)(ii) of this section; and

(iv) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency identified in subparagraph (2)(g)(ii) of this section, or have earned the accreditation and/or certification from the appropriate entity from subparagraph (2)(g)(ii) of this section to teach

and/or practice in the field for which the students are being prepared;

(h) program costs including tuition and fees; and

(i) documentation showing the provider has registered with the Utah Division of Consumer Protection, if required by UCA Title 13 Chapter 34. Governmental agencies are exempt and do not need to provide additional documentation but all other providers which are exempt from registration with the Utah Division of Consumer Protection must also submit the following:

(i) documentation of exempt status with the Utah Division of Consumer Protection;

(ii) the self-administered Department facilities accessibility checklist; and

(iii) documentation of financial stability prepared by a Certified Public Accountant.

(j) any other information, documentation or verification requested by the Department.

(3) Applications from providers covered under subsection 2 of this section must be sent to the Department. The Department will forward the application to the Regional Council in the region in which the provider does business. The Regional Council recommendation to the State Council that the application be approved or denied. The State Council takes the final action on each application.

(4) All providers must be in business for a minimum of one year before applying to become a training provider.

(5) The Department will notify a provider in writing when a final decision has been made concerning the provider's eligibility.

(6) A list of eligible providers, including the provider's program performance, if available, and cost information will be published on the Department's Internet site.

(7) Once a provider has been approved, the Department may establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review, if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(8) Providers must retain participant program records for three years from the date the participant completes the program.

(9) A provider who is not on the Department's approved provider list is not eligible for receipt of WIA funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department;

(b) has committed fraud or violated applicable state or federal law;

(c) intentionally supplies inaccurate student or program performance information; or

(d) fails to complete the review process.

(10) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

- (i) until the provider can prove it is no longer in violation of the law for minor violations;
- (ii) for a period of two years for serious violations;
- (iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department; or
- (iv) a provider removed for supplying inaccurate student or program performance information will be suspended for two years.

R986-600-653. Distance Learning Providers.

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

- (a) leads to the completion of a training program;
- (b) requires students to interact with instructors;
- (c) requires students to take periodic tests.

R986-600-655. The Right to a Hearing and How to Request a Hearing.

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) If the Council made the decision being appealed, the hearing request must be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

(3) If the Department made the determination to deny eligibility or to remove the provider, the written hearing request must be made to the Department and a hearing will be held in accordance with rule R986-100-124 through R986-100-132. Any appeal of the decision of the ALJ must be made to the Council. The Council's decision will be final.

R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

R986-600-657. Noncompliance.

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will:

- (a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;
- (b) establish a corrective action plan;
- (c) notify the provider of the time lines for the completion of the plan; and
- (d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

R986-600-658. Sanctions for Noncompliance and Right to Appeal.

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to:

- (a) discontinue referral of participants to the provider,
- (b) cancel the contract with the provider,
- (c) make other changes deemed necessary to secure compliance, and/or
- (d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

KEY: Workforce Investment Act

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Notice of Continuation September 8, 2010

35A-5

R986. Workforce Services, Employment Development.**R986-700. Child Care Assistance.****R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

- (1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.
- (2) Rule R986-100 applies to CC except as noted in this rule.
- (3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

- (1) CC is provided to support employment.
- (2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:
 - (a) parents;
 - (b) specified relatives; or
 - (c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.
- (3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.
- (4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:
 - (a) children under the age of 13; and
 - (b) children up to the age of 18 years if the child;
 - (i) meets the requirements of rule R986-700-717, and/or
 - (ii) is under court supervision.
- (5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.
- (6) The amount of CC might not cover the entire cost of care.
- (7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.
- (8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.
- (9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center.
- (10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.
- (11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.
- (12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC

even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

- (1) A client has the right to select the type of child care which best meets the family's needs.
- (2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.
- (3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.
- (4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.
- (5) The only changes a client must report to the Department within ten days of the change occurring are:
 - (a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);
 - (b) that the client is no longer in an approved training or educational program;
 - (c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;
 - (d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;
 - (e) the client is separated from his or her employment;
 - (f) a change of address;
 - (g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or
 - (h) a change in the child care provider, including when care is provided at no cost.
- (6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.
- (7) A client is responsible for payment to the Department of any overpayment made in CC.
- (8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.
- (9) The Department may also release the following information to the designated provider:
 - (a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;
 - (b) information contained on the Form 980;
 - (c) the date the child care subsidy was issued;
 - (d) the subsidy amount for that provider;
 - (e) the subsidy deduction amount;
 - (f) the date a two party check was mailed to the client;
 - (g) a copy of the two party check on a need to know basis;

and

(h) the month the client is scheduled for review or reestablishment.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

- (i) license exempt centers; or
- (ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the

subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is available during;

(i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or

(ii) the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The

percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

- (i) obtaining a high school diploma or equivalent,
- (ii) adult basic education, and/or
- (iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the

family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed \$100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent; or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not

providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

- (a) for a period of one year for the first occurrence of fraud;
- (b) for a period of two years for the second occurrence of fraud; and
- (c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a

need for child care services. The client must choose a provider setting outside the home.

(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 9 p.m. and 6 a.m. except;

- (a) for a child under the age of 24 months old,
- (b) to accommodate a special needs child, or
- (c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

- (a) an increase in the amount of care or supervision and/or
- (b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

- (b) Division of Services for People with Disabilities,
- (c) Division of Mental Health,
- (d) State Office of Education, or
- (e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

- (a) the child's name,
- (b) a description of the child's disability, and
- (c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

- (a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person,

including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in

abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

KEY: child care

April 21, 2010

Notice of Continuation September 8, 2010

35A-3-310

R986. Workforce Services, Employment Development.**R986-800. Displaced Homemaker Program.****R986-800-801. Authority for the Displaced Homemaker Program and Applicable Rules.**

The Department provides services to displaced homemakers pursuant to Section 35A-3-114. The definitions, acronyms, residency, and safeguarding of information provisions of R986-100 apply to this program.

R986-800-802. General Provisions.

Services are available to a displaced homemaker who:

- (1) has been a homemaker for a period of eight or more years without significant gainful employment in the labor market, and whose primary occupation during that period of time was the provision of unpaid household services for family members;
- (2) has found it necessary to enter the job market but is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and
- (3) has depended on the income of a family member and lost that income or has depended on governmental assistance as the parent of dependent children, and is no longer eligible for that assistance.

R986-800-803. Available Services.

- (1) The Department provides the following services to displaced homemakers either directly or through referral:
 - (a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;
 - (b) assistance in obtaining access to existing public and private employment training programs;
 - (c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;
 - (d) health education and counseling, or assistance in gaining access to existing health education and counseling services;
 - (e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues;
 - (f) prevocational self-esteem and assertiveness training; and
 - (g) encouragement of placement in any displaced homemaker program established or offered by any local, state or federal agency.
- (2) Some of these services are available through workshops conducted by the Department.

KEY: displaced homemakers

August 1, 2006

Notice of Continuation September 8, 2010

35A-3-114

R986. Workforce Services, Employment Development.**R986-900. Food Stamps.****R986-900-901. Authority for Food Stamps and Applicable Rules.**

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: <http://www.fns.usda.gov/fsp/>. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(o) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPT, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(p) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in

unearned income over \$25 or a change in the source of unearned income.

(c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(i) The Department will hold disqualification hearings by telephone.

(j) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(k) The federal regulation that requires all interviews be scheduled for a specific date and time is waved for initial telephone interviews. This allows clients to call anytime Monday through Thursday from 7 am to 5:30 p.m. to complete the required initial interview.

(l) To meet the student work exemption, a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

KEY: food stamps, public assistance
July 1, 2010
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35A-3-103