R23. Administrative Services, Facilities Construction and Management.

R23-32. Rules of Procedure for Conduct of Utah State Building Board Meetings.

R23-32-1. Purpose.

The purpose of this Rule R23-32 is to establish procedures for the conduct of Utah State Building Board meetings and to assist the public and anyone wishing to address the Building Board, whether in person or by other established means.

R23-32-2. Authority.

This Rule R23-32 is authorized under Subsection 63A-5-102(2) which directs that the Building Board "adopt rules of procedure for the conduct of its meetings." The Building Board has administrative rulemaking authority under Subsection 63A-5-103(1)(e).

R23-32-3. Definitions.

(1) "Attendance" means that person attending a Board meeting, either in person or through electronic means as authorized by this Rule.

(2) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.

(3) "Chair" means the person appointed as Chair of the Board by the Governor pursuant to Title 63A, Chapter 5, Utah Code.

(4) "Director" means the Director of the Division of Facilities Construction and Management or duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management.

(6) "Electronic meeting" is as defined in Section 52-4-103.

(7) "GOPB Official" means the Director of the Governor's Office of Planning and Budget or duly authorized designee.

(8) "Open and Public Meetings Laws" means those laws provided by Title 52, Chapter 4, Utah Code.

(9) "Presiding Officer" means the Chair. The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

R23-32-4. Composition of Board.

(1) The Board consists of eight members, seven of whom are voting members appointed by the Governor for terms of four years.

(2) The GOPB Official is a nonvoting member of the Board. As a nonvoting member, the GOPB official shall not be considered as part of the quorum requirement for Board determinations. The GOPB Official shall advise the Presiding Officer of any designee appointed prior to any meeting that the designee will be attending.

R23-32-5. Calling for Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services, Director or GOPB Official may also call for a meeting upon consent of the Chair.

R23-32-6. Compliance with Open and Public Meeting Laws.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Laws. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meeting Laws.

R23-32-7. Presiding Officer and Basic Responsibilities.

(1) The Chair shall be the Presiding Officer at all Board meetings when present in person or through electronic means.

(2) The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

(3) The Presiding Officer shall be able to make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting.

R23-32-8. Secretary to the Board.

(1) The Director shall serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Laws. The Secretary shall coordinate with others that are needed for such compliance with the Open and Public Meetings Laws.

(2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R23-32-9. Meetings.

Meetings shall generally be held on the first Wednesday of the month at 9:00 a.m. at the Utah State Capitol in Salt Lake City, Utah. During Legislative Sessions, the Chair and Director may determine another location. The date, time and location may also be modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R23-32-10. Notice and Agenda.

(1) Notice shall be given of all meetings in accordance with the Open and Public Meeting Laws.

(2) The Director and Presiding Officer shall confer a reasonable time prior to any Board meeting as to the items to be on the agenda. The Presiding Officer shall ultimately determine the matters to be on the agenda, unless a vote of the Board has been undertaken to direct an item to be placed on the agenda. Board members may also contact the Chair about any request for agenda items.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons that may have intended to attend the meeting.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer.

(5) Each agenda shall have an item on it regarding whether there are any matters to be placed on a future agenda.

R23-32-11. Attendance, Quorum and Voting.

(1) The quorum requirement for the Board is set forth in Utah Code Annotated Title 63A, Chapter 5.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least three members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the specific members of such votes shall be recorded by the Secretary.

(4) Members must be in attendance, including by electronic means in accordance with this Rule, in order to vote.

R23-32-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

(1) The GOPB Official may make and second motions, but shall not vote on any motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those that request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion that assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions as are appropriate under their authority.

R23-32-13. Committees.

The Board may appoint committees to investigate or report on any matter which is of concern to the Board.

R23-32-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to be ejected from the meeting.

R23-32-15. Robert's Rules of Order.

All matters not covered by this Rule R23-32 shall be determined by either Robert's Rules of Order, latest published edition, an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or with abbreviated procedures as determined by the Presiding Officer.

R23-32-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R23-32-15 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Laws.

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

(d) When notice is given of the possibility of a Board member appearing electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are appearing electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(f) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R23-32-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R23-32 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

KEY: Building Board, conduct, meeting procedures
December 9, 2011 **63A-5-102(2)**
63A-5-103(1)(e)

R27. Administrative Services, Fleet Operations.
R27-10. Identification Mark for State Motor Vehicles.
R27-10-1. Authority.

(1) Pursuant to Section 63A-9-401(5), the Department of Administrative Services is responsible for ensuring that state-owned vehicles for all departments, universities and colleges are marked as required by Section 41-1a-407. If "EX" license plates are required, the identification mark is also required, as described herein, for these agencies.

(2) Subsection 63A-9-601(1)(c) requires the Department of Administrative Services to enact rules relating to the size and design of the identification mark.

R27-10-2. Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah.

(a) Light/Heavy duty trucks, service vehicles and off-road equipment shall be clearly marked, on each front door, with an eight-inch seal. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division. All identification markings must be approved by the Division of Fleet Operations prior to use.

(b) Non-law enforcement passenger vehicles shall be marked with a translucent identification sticker, four inches in diameter on the furthest rearward window in the lower most rearward corner, on each side of the of the vehicle.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

R27-10-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX."

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

R27-10-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-10-4(1) may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

R27-10-5. Effective Date.

(1) All motor vehicles obtained or leased for use after the effective date of these rules shall display the prescribed identification mark.

(2) All passenger motor vehicles owned, leased for use or operated by the state, except as herein excepted, shall display an identification mark as required by these rules no later than two years following the effective date of this rule. Special purpose vehicles currently displaying markings other than as prescribed herein may retain such markings until the vehicle bearing them is disposed of.

KEY: motor vehicles
April 20, 2009 **41-1a-407**
Notice of Continuation December 16, 2011 **63A-9-401**
63A-9-601(1)(c)

R58. Agriculture and Food, Animal Industry.
R58-20. Domesticated Elk Hunting Parks.
R58-20-1. Authority and Purpose.

In accordance with the Domesticated Elk Act, and the provisions of Section 4-39-106, Utah Code, this rule specifies:

(i) procedures for obtaining domesticated elk facility licenses,

(ii) requirements for operating those facilities,

(iii) standards for disposal/removal of animals within those facilities, and

(iv) health standards and requirements in such facilities.

R58-20-2. Definitions.

In addition to terms used in Section 4-39-102, and R58-18-2:

(1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.

(2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.

(3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.

(4) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.

(5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.

(6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

(1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.

(3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.

(6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.

(7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

(1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.

R58-20-5. Facilities.

(1) Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

R58-20-6. Records.

(1) All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks.

R58-20-7. Genetic Purity.

(1) All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks.

R58-20-8. Acquisition of Elk.

(1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.

R58-20-9. Identification.

(1) All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.

R58-20-10. Inspections.

(1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.

(3) All live domestic elk must be brand inspected prior to entering or leaving the park.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.

(6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.

(7) Pursuant to Section 4-39-207, agricultural inspectors

may, at any reasonable time during regular business hours, have free and unimpeded access to inspect all facilities, animals and records where domestic elk are kept.

R58-20-11. Health Rules.

(1) All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.

R58-20-12. Meat.

(1) The selling of domestic elk meat obtained from a licensed hunting park will not be allowed and:

(a) Must be consumed by either the hunter or park owner or their immediate family members, regular employees or guests, or the meat shall be:

(b) Donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

R58-20-13. Dissolution of an Elk Hunting Park.

(1) Before an elk hunting park can be dissolved all elk must be removed from the premises.

(2) Any abandoned elk will be removed by the Utah Department of Agriculture and Food using lethal means.

(a) Carcasses will be disposed of by either disposal in an approved landfill, incineration, or donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

(b) Costs for removal of abandoned elk will be charged to the owner of the elk hunting park.

R58-20-14. Liability.

(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

(4) In accordance with the state's governmental immunity act, as found in Section 63G-7-101, et seq., the granting of a hunting park license or the imposing of a requirement to gain an owner's permission does not attach any liability to the state for any accident, mishap or injury that occurs on, adjacent to, or in connection with the hunting park.

KEY: inspections
December 19, 2011 **4-39-106**
Notice of Continuation February 23, 2009

R137. Career Service Review Office, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the incumbent in the position defined at Subsection 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

CSRO means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-406.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-406 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 4 level.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance case at the evidentiary/step 4 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance issue to the evidentiary/step 4 level.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a

grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated evidentiary/step 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRO and CSRO hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRO or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of

grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

(b) A person receiving a subpoena issued by the CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail and Distribution Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Hearing Dates, Continuance/Extension of Time.

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, the administrator shall set a date for the evidentiary/step 4 hearing that is:

(a) within 30 days of the administrator's determination; or

(b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16-(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible

provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 4 Level.

(1) All grievances shall be reviewed to determine: Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsection 67-19a-202(1)(a), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.

(2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2 or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 67-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance then becomes a formal complaint necessitating a response. Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. Such responses are to be issued by only one supervisor, director, etc. at each step.

Step 2; If the grievance is not resolved at step 1, the employee may advance their grievance to step 2. Step 2 requires the grievance be reviewed by the agency or division director or designee;

Step 3; If the grievance is not resolved at step 2, the employee may advance their grievance to step 3. Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.

Step 4; If the grievance is not resolved at step 3, the employee may advance their grievance to step 4. Step 4 is an evidentiary de novo hearing conducted before a CSRO hearing officer.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been suspended without pay, demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3. Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO at the evidentiary/step 4 level.

(2) When appealed to the CSRO, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal a reduction in force or abandonment of position according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days of receipt of the decision with the CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsection 67-19a-403(2) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsection 67-19a-403(2) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.

(2) Determination. The administrator has authority to determine which types of grievances may be heard at the evidentiary/step 4 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 4 level are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in Subsection 67-19a-202(1)(a) and referenced in Subsection 67-19a-302(1) are precluded from advancement to the evidentiary/step 4 level. When the grievance is precluded from the evidentiary/step 4 level, the matter under dispute shall be deemed as final at the level of the department head/step 3 according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator or the presiding hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 3; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and evidentiary/step 4 proceedings before the CSRO.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All initial administrative and evidentiary/step 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file pursuant to Subsection 67-19a-403(2) is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.

(5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record. A ruling is then made by the presiding CSRO hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or

repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2).

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the presiding CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRO for the granting of any exceptions to the page limitation provision.

(c) The CSRO may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are subpoenaed to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the presiding CSRO hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The presiding CSRO hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties.

(c) The presiding CSRO hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) An evidentiary/step 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at the jurisdictional and evidentiary/step 4 level are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras

are not permitted at the evidentiary/step 4 proceeding.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The Evidentiary/Step 4 Adjudicatory Procedures.

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step 4 Hearing. An evidentiary/step 4 hearing shall be a hearing on the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 4 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain

specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 4 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the evidentiary/step 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the evidentiary/step 4 decision. The CSRO may not share any cost for a transcript or transcription of the evidentiary/step 4 hearing.

R137-1-22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRO.

(b) The petition shall be date-stamped upon receipt in the CSRO.

(3) Petition Form. The petition shall:

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

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

(c) describe the circumstances in which applicability is to be reviewed;

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

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

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The administrator shall prepare the declaratory ruling without unnecessary delay. The CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRO shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the CSRO.

KEY: grievance procedures

December 9, 2011	**34A-5-106**
Notice of Continuation July 18, 2011	**67-19-16**
	67-19-30
	67-19-31
	67-19-32
	67-19a et seq.
	63G-4 et seq.

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 supervising 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 December 19, 2011 58-1-106(1)(a)
58-1-202(1)(a)

R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.
R277-106-1. Definitions.

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

B. "Nomination application" means:

(1) written and signed statement by the Superintendent of the school district in which the educator is currently employed, that the Superintendent understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a superintendent, the chair of the local school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal that the principal understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

C. "Superintendent" means the State Superintendent of Public Instruction.

D. "UPPAC or Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et. seq.

R277-106-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing Commission members, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-3. UPPAC Notification, Nomination and Application Process.

A. The UPPAC Executive Secretary shall notify school districts, charter schools and education organizations in writing of openings on UPPAC for the upcoming term by May 15 of the year in which the Commission vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

R277-106-4. UPPAC Selection Process.

A. The UPPAC Executive Secretary shall review all complete and properly filed applications and make recommendation(s) to the Superintendent prior to May 30 of the year in which membership on the Commission is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(2) Recommendations shall maintain a representative balance of six teachers and three other educators.

(3) Recommendations shall give consideration to rural/urban, elementary/secondary and geographical balance of Commission members.

B. The Superintendent shall make Commission appointments prior to June 1 of the year in which Commission members shall begin serving.

C. Community members

(1) Members shall be nominated by the state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state.

(2) The two community members shall not serve concurrent terms.

D. If current Commission members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

E. The applications(s) of (a) Commission member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

R277-106-5. Filling of Vacancies.

A. The UPPAC Executive Secretary shall recommend names to the Superintendent to fill vacancies that occur midyear.

B. The UPPAC Executive Secretary may recommend names of previous applicants for Commission vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented to fill vacancies.

KEY: professional competency, professional practices*
December 8, 2011 **Art X Sec 3**
Notice of Continuation September 15, 2008 **53A-6-303(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. Definitions.

A. This rule uses the definition of neglected child found in Section 78A-6-105(26).

B. This rule uses the definition of abused child found in Section 78A-6-105(2).

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

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

R277-401-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board 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 clarify:

(1) the Board's support for taking early protective measures towards allegations of child abuse. The daily contact of education personnel with children places them in an ideal position for identifying and referring suspected cases of abuse.

(2) the role of school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

R277-401-3. Policies and Procedures.

A. Each LEA shall develop and adopt a child abuse-neglect policy.

(1) School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect.

(2) LEA policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.

(3) An LEA policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DFS.

(4) LEA policies shall direct school employees to cooperate appropriately with law enforcement and DCFS investigators who come into the school, including:

(a) allowing authorized representatives to interview children consistent with DCFS and local law enforcement protocols;

(b) allowing appropriate access to student records;

(c) making no contact with parents/legal guardians of children being questioned by DCFS or local law enforcement; and

(d) cooperating with ongoing investigations and maintaining appropriate confidentiality.

B. School employee responsibilities

(1) Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).

(2) It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the Division of Child and Family Services. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reasonable belief that a reportable problem exists.

(3) Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

KEY: child abuse, education policy, faculty, students
December 8, 2011 Art X Sec 3
Notice of Continuation September 6, 2007 53A-1-401(3)

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Charter school" means a school that is authorized and operated under Sections 53A-1a-501.6, 53A-1a-515 and 53A-1a-501.3.

D. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

E. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

F. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

G. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

H. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

I. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

J. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

K. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

L. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

M. "Private school" means an educational institution that is not a charter school but is owned or operated by a private person, firm, association, organization, or corporation, rather than subject to governance by the Board consistent with the Utah Constitution.

N. "Program" means an institution within a larger education entity that is designed to accomplish a predetermined curricular objective or set of objectives.

O. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

P. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action or both; or

(4) other extenuating circumstances beyond the control of the student.

Q. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

R. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

S. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

T. "School" means an educational entity governed by an LEA that is supported with public funds, includes enrolled or prospectively enrolled full-time students, employs licensed educators as instructors that provide instruction consistent with R277-502-5, has one or more assigned administrators, is accredited consistent with R277-410-3, and administers required statewide assessments to its students.

U. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

V. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

W. "School of enrollment" means the school where a student takes a majority of his classes; the school designated to receive the student's weighted pupil unit.

X. "School year" means the 12 month period from July 1 through June 30.

Y. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

Z. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

AA. "SSID" means Statewide Student Identifier.

BB. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

CC. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-4B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

EE. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

FF. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

GG. "Youth in Custody (YIC)" means a person under the age of 21 who is:

(1) in the custody of the Department of Human Services;

(2) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of

Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(3) being held in a juvenile detention facility.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Schools and Programs.

A. Schools

(1) Each school shall receive the appropriate accountability reports from the USOE and other state-mandated reports for the school type and grade range; and

(2) All schools shall submit a Clearinghouse report; and

(3) All schools shall employ at least one licensed educator and one administrator.

B. Programs

(1) Students who are enrolled in a program shall remain members of a public school; and

(2) Programs shall not receive separate accountability and other state-mandated reports from the USOE; and

(3) Students reported under a program shall be included in WPU and student enrollment calculations of a school of enrollment; and

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs shall not be required to submit data to the USOE; and

(2) Private schools or programs shall not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-8.

(2) The required school days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate school days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-6. High School Completion Status.

A. The final status of all students who enter high school (grades 10-12) shall be accounted for, whether they graduate or leave high school for other reasons. LEAs shall use the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) Graduates are students who earn a basic high school diploma by satisfying one of the options consistent with R277-705-4B or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733.

(2) Other students are completers who have not satisfied Utah's requirements for graduation but who:

(a) shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C; or

(c) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or

(d) pass a General Educational Development (GED) test with a designated score.

(3) Continuing students are students who:

(a) transfer to higher education, without first obtaining a diploma; or

(b) transfer to the Utah Center for Assistive Technology

(UCAT) without first obtaining a diploma; or

(c) age out of special education.

(4) Dropouts are students who have no legitimate reason for departure or absence from school or who:

(a) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii); or

(b) are expelled and do not re-enroll in another public education institution; or

(c) transfer to adult education.

(5) Students shall be excluded from the cohort calculation if they:

(a) transfer out of state, out of the country, to a private school, or to home schooling; or

(b) are U.S. citizens who enrolled in another country as a foreign exchange student; or

(c) are non-U.S. citizens who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case they shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code; or

(d) died.

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

C. The USOE shall report a graduation rate for each school, LEA, and the state.

(1) The four-year cohort rate shall be reported on the annual state reports.

(2) The three-year cohort graduation rate shall be reported separately for high schools on the official state graduation report.

R277-419-7. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-8. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1U, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment

December 8, 2011	**Art X Sec 3**
Notice of Continuation October 5, 2007	**53A-1-401(3)**
	53A-1-402(1)(e)
	53A-1-404(2)
	53A-1-301(3)(d)
	53A-3-404
	53A-3-410

R277. Education, Administration.
R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program.
R277-422-1. Definitions.

A. "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

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

C. "Board local levy" means a state-supported program under Section 53A-17a-164 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program.

D. "Common Data Committee" means a committee established by the USOE responsible to determine consensus estimates for student enrollments and assessed valuations. The Committee includes representatives from the Governor's Office of Planning and Budget, the Legislative Fiscal Analyst's Office, and the Utah State Tax Commission.

E. "Free or reduced meal applications" means the applications received by a school district or charter school under the Board-supervised federal Child Nutrition Program.

F. "Local board" means the school board members elected to govern a school district.

G. "State-supported" means a formula-based state contribution of funds to the voted local levy program and the Board local levy program as defined in Section 53A-17a-133(3) and Section 53A-17a-164(3).

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

I. "Voted local levy" means a state-supported program in which a voter-approved property tax levy under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

J. "Weighted pupil unit (WPU)" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to establish rules for school productivity and cost effectiveness measures, federal programs, school budget formats, and financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted local levy, board local levy, and reading improvement program.

R277-422-3. Requirements and Timelines for State-Supported Voted Local Levy.

A. A local board may establish a state-supported voted local levy program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted local levy or voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted local levy equal to or less than the levy authorized by the election.

C. Effective January 1, 2009, a school district may budget an increased amount of ad valorem property tax revenue from a voted local levy in addition to revenue from new growth without required compliance with the advertisement requirements if the voted local levy is or was approved:

(1) on or after January 1, 2003;

(2) within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax; and

(3) for a voted local levy approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

D. Effective January 1, 2009, a school district may levy a tax rate without meeting the advertisement requirements of Section 59-2-919 if:

(1) the levy exceeds the certified tax rate as the result of a school district budgeting an increased amount of ad valorem property tax derived from a voted local levy;

(2) the voted local levy was approved on or after January 1, 2003;

(3) the voted local levy was approved within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax revenue derived from the voted local levy; and

(4) for a voted local levy approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

E. An election to consider adoption or modification of a voted local levy program is required.

F. A local board may continue an existing voted local levy program despite a majority vote opposing a modification of the voted local levy program.

G. If adoption of a voted local levy program is contingent upon an offset reduction of other local board tax levies, the local board shall allow the electors, in an election, to reconsider modifying or discontinuing the voted local levy program prior to a subsequent increase in the certified tax rate as set by the local board.

H. The state provides state guarantee funds to support the district voted local levy according to the amount specified in Section 53A-17a-133(3) and the Board local levy according to the amount specified in Section 53A-17a-164(3).

I. State and local funds received by a local board under the voted local levy program are unrestricted revenue and may be budgeted and expended within the school district's general fund.

J. In order to receive state support for an initial voted local levy tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial voted local levy tax rate.

K. If a school district qualifies for state support the year prior to an increase in its existing voted local levy; and:

(1) does not receive voter approval for an increase after June 30 of the previous fiscal year and before December 2 of the previous fiscal year; and

(2) intends to levy the additional rate for the fiscal year starting the following July 1; then

(3) the district shall only receive state support for the existing voted local levy tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. K-3 Reading Achievement Program.

A. The K-3 Reading Improvement Program consists of program funds and is created to achieve the state's goal of having third graders reading at or above grade level.

B. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150 which requires matching funds and Section 53A-17a-151.

(2) The following data shall be used for the reading fund

calculations:

(a) The most recent numbers of adjusted assessed valuations received by the USOE from the Common Data Committee;

(b) The previous year's tax collection rate;

(c) The previous year's number of Free and Reduced Price Meal applications; and

(d) The current fiscal year total number of WPUs received by LEAs for the basic school program.

KEY: education, finance

December 8, 2011	**Art X Sec 3**
Notice of Continuation October 5, 2007	**53A-1-402(1)(f)**
	53A-1-401(3)
	53A-17a-133
	53A-17a-164
	53A-17a-150
	53A-17a-151
	59-2-919

R277. Education, Administration.
R277-424. Indirect Costs for State Programs.
R277-424-1. Definitions.

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

B. "Direct costs" means costs which can be easily, obviously, and conveniently identified by the Utah State Office of Education with a specific program.

C. "Indirect costs" means the costs of providing indirect services. Restricted and non-restricted indirect costs are defined in R277-425, "Budgeting, Accounting and Auditing Handbook for Utah School Districts."

D. "Indirect Services" means services which cannot be identified with a specific program.

E. "LEA" means a local education agency which includes school districts and charter schools.

F. "Non-restricted indirect cost rate" means a rate assigned to each LEA annually, based on the ratio of non-restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

G. "Restricted indirect cost rate" means a rate assigned to each LEA annually based on the ratio of restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

H. "Unallowable costs" means expenditures directly attributable to governance. Governance includes salaries and expenditures of the office of the superintendent, the governing board, election expenses, and expenditures for fringe benefits which are associated with unallowable salary expenditures.

R277-424-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to adopt rules for financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish Board standards for claiming indirect costs for state programs.

R277-424-3. Standards.

A(1) LEAs may charge indirect costs to state funded programs.

(2) The Board shall not authorize or pay indirect costs to higher education institutions for state funded contractual work.

B. Prior to the beginning of each fiscal year, the Utah State Office of Education publishes a schedule of the indirect cost rates for state programs. The schedule is developed from data gathered from the Annual Financial Reports submitted by the LEAs. Each program schedule shows whether or not the restricted or non-restricted indirect cost rate applies and whether or not indirect costs are allowable or applicable.

C. Recovery of indirect costs is subject to availability of funds. If a combination of direct and indirect costs exceeds funds available, then the LEA may not recover the total cost of the project or program. Recovery of indirect costs for state programs is optional for LEAs.

D. Indirect costs for state programs may be recovered only to the extent that direct costs were incurred. The indirect cost rate is applied to the amount expended, not to the total grant, in order to determine the amount for indirect costs.

KEY: education finance
December 8, 2011 **Art X Sec 3**
Notice of Continuation October 5, 2007 **53A-1-402(1)(f)**
53A-1-401(3)

R277. Education, Administration.
R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.
R277-477-1. Definitions.

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

C. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

D. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

E. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

F. "Most critical academic needs" for purposes of this rule means needs identified in the school improvement plan developed in accordance with Section 53A-1a-108.5.

G. "School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust Program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

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

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, 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:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for:

(a) review and monitoring of funds and revenue generated by school trust lands;

(b) compliance by councils with requirements in statute and Board rule; and

(c) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(4) define the roles, duties, and responsibilities of the School Children's Trust Section within the USOE.

R277-477-3. Distribution of Funds - Determination of Proportionate Share.

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

(1) School Improvement Plan;

(2) School LAND Trust Program;

(3) Reading Achievement Plan (for elementary schools)

(4) Professional Development Plan;

(5) Child Access Routing Plan; and

(6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil amount, multiplied by the audited fall enrollment total, as the USDB annual allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. As part of the school plan submission:

(1) principals shall provide a signed assurance that the membership of the school community council and the process used for election and appointment of members to the council was made consistent with 53A-1a-108 and 53A-16-101.5; and

(2) A record of the vote by the school community council when the school plan was approved including the date of the vote, voters for, against, and absent voters, consistent with 53A-16-101.5.

L. In accordance with R277-477-3D, income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools beginning in July each fiscal year based on deposits to the Interest and Dividends Account within the Uniform School Fund from the prior fiscal year.

M. If a school chooses not to apply for School LAND Trust Program funds and meet the requirements for receiving funds, the funds allocated for that school shall be retained at USOE and included with the statewide distribution for the following school year.

N. Local boards of education or the SCSB shall consider plans annually and may approve or disapprove a school plan. If a plan is not approved, the local board shall provide a written explanation of necessary amendments prior to resubmission of the plan consistent with Section 53A-16-101.5.

O. Local boards shall ensure timely distribution of the funds to schools with approved plans.

P. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

Q. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in the school plan or report.

R. School LAND Trust Program funds shall be focused on the school's most critical academic needs.

S. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified most critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

T. Examples of successful programs using School LAND Trust Program monies include activities such as:

(1) credit recovery courses and programs;

(2) study skills classes;

(3) college entrance exam preparation classes;

(4) academic field trips;

(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;

(6) teachers and teacher aides;

(7) professional development directly tied to school academic goals;

(8) student focused educational technology;

(9) books and textbooks.

U. Examples of programs not eligible for funding using School LAND Trust Program monies include plans to improve school climate, provide security, address behavioral issues, prevent bullying, install permanent auditorium audio systems, and initiate or support other non-academic school needs.

V. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

W. The School Children's Trust Section of the USOE shall create and electronically post training and support materials for school community councils, charter school trust land committees and local school boards.

X. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, or inconsistent with the school board/charter board approved plan may be reduced or eliminated by the Board in subsequent years until the misappropriated funds have been restored.

Y. The Board may recommend that School LAND Trust Program funds be reduced or eliminated if the school has failed to comply with Section 53A-1a-108 in the election or appointment of school community council members.

Z. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

AA. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-11, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

BB. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

CC. A designated amount approved by the Board of the Interest and Dividends Account may be used to fund the administration of the program by the School Children's Trust Section.

DD. Any unused balance initially allocated for School LAND Trust Program administration shall be deposited in the Interest and Dividends Account for future distribution to schools in the School LAND Trust Program.

R277-477-4. Administration of School LAND Trust Program.

A. The School Children's Trust Section of the USOE shall provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. The School Children's Trust Section shall report directly to the Superintendent or the Superintendent's designee. Staff in the School Children's Trust Section may include individuals who:

(1) possess professional qualifications and expertise pertinent to the purposes and activities of the trust;

(2) possess professional qualifications in areas specifically related to the trust such as trust law, finance, real estate, and energy development;

(3) may or may not have experience in public schools and may or may not hold an educator license.

C. The School Children's Trust Section shall advise and assist the Board and the Superintendent in:

(1) representing the current and future beneficiaries of the common school trust, Institution for the Blind trust, and School for the Deaf trust to the School and Institutional Trust Lands Administration (SITLA), the State Treasurer, and the Utah Attorney General by providing oversight as directed by the Superintendent or the Superintendent's designee.

(2) informing and providing support or support services to school community councils, schools, school districts, and other education groups to advocate on behalf of public education on federal, state, and local land decisions and policies as they affect school funding and the long term growth of the permanent State School Fund as directed by the Superintendent or the Superintendent's designee.

D. Support services shall include:

(1) Regional training and, as requested and to the extent of resources available, school district or school training for school community councils;

(2) Training materials to support school community councils in creating and reviewing school improvement plans, School LAND Trust plans, reading achievement plans, professional development plans, and child access routing plans for both elementary and secondary schools.

(3) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

E. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

F. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

G. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective compliance reviews of School LAND Trust expenditures, the execution of School LAND Trust plans, and other school community council requirements.

H. The School Children's Trust Section shall report annually to the Board on compliance review findings and other compliance issues. The Board shall make determinations regarding reduction or elimination of all or a portion of a school's School LAND Trust Program funding in subsequent years, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section and results of a Legislative Auditor's school community council election review process, and make a report to the Public Education Appropriation Subcommittee.

I. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

(1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;

(2) providing information to federal, state and local government agencies, the general public, Congress, and the Legislature regarding school trust lands, the trust revenues and expenditure of revenues;

(3) reviewing and providing information as representatives of the Superintendent to the Congress, Legislature, boards, state and federal agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;

(4) increase and strengthen beneficiary monitoring; and

(5) other activities or assignments as directed by the Superintendent.

J. The president of each local board of education or of each local charter board shall ensure that the members of the board are provided with annual training on the requirements of the School LAND Trust Program. Notice of training shall be provided to the USOE School Children's Trust Section via email of board minutes identifying training information.

K. A local school board shall comply with Section 53A-1a-108(10) and provide required copies of the Utah Code to school community council members.

R277-477-5. Information to USOE.

A. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures by category made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

KEY: schools, trust lands funds
December 8, 2011 **Art X Sec 3**
Notice of Continuation November 10, 2011 **53A-16-101.5(3)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-480. Charter School Revolving Account.
R277-480-1. Definitions.

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515, by the Board under Section 53A-1a-505, and by boards of trustees of higher education institutions under Section 53A-1a-501.3.

C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(1) meet school building construction and renovation needs; and

(2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.

D. "Charter School Revolving Account Committee" means the committee established by the Board under Section 53A-1a-522(6).

E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

F. "Urgent facility need," as provided for in Section 53A-1a-522(5)(d), means an unexpected exigency that affects the health and safety of students such as:

(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

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

R277-480-2. 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-522(2)(b) which requires the Board to administer the Charter School Revolving Account, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for administering the Charter School Revolving Account to determine membership of the Charter School Revolving Account Committee, and to determine loan amounts and loan repayment conditions.

R277-480-3. Charter School Revolving Account Committee.

A. The Board shall establish a Charter School Revolving Account Committee consistent with Section 53A-1a-522(6).

B. The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Section 53A-1a-522(6)(b) for appointment by the Board consistent with timelines established by the Board.

C. The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of 53A-1a-522(6)(b).

D. The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Section 53A-1a-522(6).

E. Charter School Revolving Account Committee members appointed by the Board after May 1, 2010 shall be appointed for two year terms.

F. The USOE Charter School Director or designee shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53A-1a-522, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Section 53A-1a-522(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-1a-522 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-1a-522. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to $150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to $75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-1a-522 shall not exceed:

(a) $1,000 per pupil based on prior year October 1 enrollment count for operational schools; or

(b) $1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) $300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall

review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account
December 27, 2011 **Art X, Sec 3**
53A-1a-522(2)(b)
53A-1-401(3)

R277. Education, Administration.
R277-512. Online Licensure.
R277-512-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

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

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

C. "License" for purposes of this rule means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Section 53A-6-103.

D. "License record" means the electronic record of license holder and license applicant personal information and credentials maintained on the CACTUS database at the USOE.

E. "License transaction" means the interactions between a license holder or applicant and the USOE or Board that result in issuance of a license, renewal of a license, or modification of a license or license record by or from the USOE.

F. "Online license transaction" means those license transactions that take place via the process maintained by the USOE contracted provider.

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

H. "Utah Professional Practices Advisory Commission" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Sections 53A-6-301 through 53A-6-307.

R277-512-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained as license transactions change to online processes. Online licensure shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, and for school districts and charter schools.

R277-512-3. Procedures.

A. All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

B. Educators may receive electronic or paper verifications of licensure transactions, but these shall not constitute the educator license.

C. CACTUS shall be the final repository of educator information and credentials for school districts, charter schools, and other authorized CACTUS users.

D. Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other wide-spread online processes.

E. USOE licensing transactions shall take place electronically.

F. Approved Utah educator preparation institutions, school districts, charter schools, and other CACTUS users shall cooperate with the USOE by using the online tools and procedures provided by the USOE for transmission of information related to licensing.

R277-512-4. Audits.

A. The USOE shall establish an auditing program that provides for adequate review of online licensure transactions. The purpose of audits is to ensure the accuracy, reliability, and completeness of online licensure transactions.

B. All licensure transactions may be subject to audit within one year of the completion of the transaction or at any time for cause. Audits shall be conducted by USOE staff.

C. Individuals designated by school districts and charter schools and approved by the USOE shall have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

D. Audits may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction. The license holder may be required to submit transcripts, records of participation in professional development activities, supervisor letters or endorsements, and other documentation needed to determine that the assertions of the license holder made during the license transaction were accurate and verifiable.

E. If an audit finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the audit findings shall be forwarded to the Utah Professional Practices Advisory Commission.

F. A license transaction that was completed on the basis of inaccurate information may be voided at any time with reasonable notice to the license holder.

R277-512-5. License Applicant and License Holder Responsibilities.

A. License applicants and license holders shall supply accurate and complete information as requested in all license transactions.

B. License applicants and license holders shall maintain files and documentation of the information provided in all license transactions for a period of one year after the completion of the license transaction.

C. A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by the Utah Professional Practices Advisory Commission.

R277-512-6. Licensing Costs.

A. The Utah legislative intent and the intent of the Board is that the licensing process should be automated and should be self-sustaining.

B. The USOE shall determine and assess licensing fees to license applicants that cover the actual and complete costs of licensing.

C. The USOE Licensing Section shall maintain accurate records and documentation of fees assessed and costs of online licensing and any USOE review responsibilities.

R277-512-7. Licensing Records.

A. Records of online licensure transactions shall be recorded in CACTUS.

B. License applicants shall be required to submit a social security number in order to be licensed. Social security

numbers shall be carefully protected and only individuals specifically designated by school districts/charter schools and approved by the USOE shall have access to licensing files.

C. License applicants and license holders shall update personal CACTUS information in a timely manner.

D. CACTUS records may be used by the USOE for research and other valid educational purposes.

KEY: online, licensure
January 23, 2007 **Art X Sec 3**
53A-1-402(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-1. Definitions.

A. "ADA" means average daily attendance.

B. "ADM" means average daily membership.

C. "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

D. "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices. All approved costs are adjusted by the USOE consistent with a Board-approved formula per the annual legislative transportation appropriation.

E. "APR" means the school district's annual program report, one component of which is for approved to and from school pupil transportation costs.

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

G. "Bus route miles" means operating a bus with passengers.

H. "Deadhead" means operating a bus when no passengers are on board.

I. "Hazardous" means danger or potential danger which may result in injury or death.

J. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

K. "IEP" (individualized education program) means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347. The IEP serves as a communication vehicle between parents and school personnel and enables them as equal participants to decide jointly what the student's needs are, what services shall be provided to meet those needs, what the anticipated outcomes may be, and how the student's progress toward meeting the projected outcomes shall be evaluated.

L. "Local board" means the local school board of education.

M. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.

N. "Out-of-pocket expense" means gasoline, oil, and tire expenses.

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

R277-600-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)(d) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and standards for eligibility.

B. The purpose of this rule is to specify the standards under which school districts may qualify for state transportation funds.

R277-600-3. General Provisions.

A. State transportation funds are used to reimburse school districts for the costs reasonably related to transporting students to and from school. The Board defines the limits of school district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the school district, and approved by the state, are A category costs. Other methods of transporting students to and from school are B category costs. The Board devises a formula to determine the reimbursement rate for A category costs consistent with Section 53A-17a-127(3). B category costs are approved on a line-by-line basis by the USOE after comparing the costs submitted by a school district with the costs of alternative methods of performing the designated function(s) and subject to adjustment per legislative appropriation.

C. The USOE shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The USOE shall also develop uniform forms for the administration of the program.

D. All student transportation costs are recorded. Accurate mileage, minute, and trip records are kept by program. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

R277-600-4. Eligibility.

A. State transportation funds shall be used only for transporting eligible students.

B. Transportation eligibility for elementary students (K-6) and secondary students (7-12) is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended by assignment of the local board.

C. A student whose IEP identifies transportation as a necessary service is eligible for transportation regardless of distance from the school attended by assignment of the local board.

D. Students who attend school for at least one-half day at an alternate location are expected to walk distances up to 1 and one half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

A. Students with disabilities are transported on regular buses and regular routes whenever possible. School districts may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

B. School districts may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

C. Transportation is provided by the Utah Schools for the Deaf and the Blind for students who are transported to its self-contained classes. Exceptions may be approved by the USOE.

R277-600-6. Bus Route Approval.

A. Transportation is over routes proposed by local boards and approved by the USOE. Information requested by the USOE shall be provided prior to approval of a route. A route usually is not approved for reimbursement if an equitable student transportation allowance or a subsistence allowance accomplishes the needed transportation at less cost. A route shall:

(1) traverse the most direct public route;

(2) be reasonably cost effective related to other feasible alternatives;

(3) provide adequate safety;

(4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(5) include an economically adequate number of students.

B. The minimum number of general education students required to establish a route is ten; the minimum number of students with disabilities is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The school district designates safe areas for bus stops.

(1) To promote efficiency, the USOE approved minimum distance between bus stops is 3/10 of a mile. The USOE may approve shorter distances between bus stops for student safety.

(2) Bus routes shall avoid, whenever possible, bus stops on dead-end roads.

(3) Students are responsible for their own transportation to bus stops up to one and one-half miles from home.

(4) Special education students are responsible for their own transportation to bus stops consistent with their IEPs.

D. Changes made by school districts in existing routes or the addition of new routes shall be reported to the USOE as they occur. The USOE shall review and may refuse to fund route changes as applicable.

E. Transporting eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day is approved route mileage.

G. A route may be approved as an alternative to building construction upon special permission of the USOE if the route is needed to allow more efficient school district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across school district boundaries.

H.(1) School districts may use State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(a) the local board has a policy that includes approval of trips at the appropriate administrative level;

(b) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(c) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is most appropriate for the trip or activity; and

(d) the local board has consulted with State Risk Management.

(2) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing school districts maintain documentation that the routes are necessary, or are more cost-effective, or provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

Bus routes that involve a large number of deadhead miles are analyzed for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a school district M.P.V. are approved costs as long as the costs demonstrate efficiency.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are an approved cost. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, nearest the student's home. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations;

(2) a student allowance is made to the student and not to the parent for transporting one's own child or other students. This does not restrict parents from pooling resources;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance is payable to the school district to help pay the costs of school district transportation;

(4) the student's mileage shall be measured and certified in school district records. The student's ADA, as entered in school records, is used to determine the student's attendance.

C(1) The cost incurred in providing a subsistence allowance is an approved cost. A parent is reimbursed for a student's room and board when a student lives at a site nearer to the assigned school, if the student does not have a school facility or bus service available within approximately 60 miles of the student's residence. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of two round trips per year.

(2) A subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the convenience of the family. A parent's residence during the school year is the residence of the child.

D. Contracting or leasing for pupil transportation

(1) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(2) Reimbursements for school districts using a leasing arrangement are determined in accordance with the comparable cost for the school district to operate its own transportation.

(3) Under a contract or lease, the school district's transportation administrator's time shall not exceed one percent of the commercial contract cost.

(4) Eligible student counts, bus route mileage, bus route minutes, and bus inventory data are required as if the school district operated its own transportation.

R277-600-8. Other Reimbursable Expenses.

State transportation funds at the USOE determined prorated amount may be used to reimburse a school district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program:

(1) a full time supervisor may be paid at the same rate as other professional directors in the school district. The supervisor's salary shall be commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions. A school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is kept;

(2) The wage time for bus drivers includes to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling;

B. Only a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance) may be paid from the school district's transportation fund;

C. Purchased property services;

D. Property, comprehensive, and liability insurance;

E. Communication expenses and travel for supervisors to workshops or the national convention;

F. Supplies and materials for vehicles, the school district transportation office and the garage;

G. Depreciation: The USOE computes an annual formula for school bus depreciation;

H. Training expenses to complete bus driver instruction and certification required by the Board; and

I. Other related costs approved by the USOE which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

A. AFR for all pupil transportation costs shall only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

B. Expenditures for uses of school district buses and equipment which are not approved APR to and from school pupil transportation costs shall be deleted when transportation costs are calculated. Bus and equipment costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

C. Expenses determined by the USOE to be not directly related to transportation of eligible students to and from school are not reimbursable.

D. Local boards may determine appropriate non-school uses of school buses. Local boards may lease/rent public school buses to federal, state, county, or municipal entities, and those insured by State Risk Management or to non-government entities or to those not insured through State Risk Management. In making these determinations, local boards shall:

(1) require full cost reimbursement for any non-public school use including:

(a) cost per mile;

(b) cost per minute;

(c) bus depreciation.

(2) require documentation from the non-school user of insurance through State Risk Management or private insurance coverage and a fully executed agreement for full release of indemnification;

(3) require that any non-school use is revenue neutral; and

(4) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

E. If a non-governmental entity or an entity not insured through State Risk Management requests the use of school bus(es), the use shall be approved by a local board in an open board meeting.

F. In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency. The local board shall grant the request so long as the use can be accommodated consistent with continuing student safety and transportation requirements.

R277-600-10. Board Local Levy.

A. Costs for school district transportation of students which are not reimbursable may be paid for from general funds of the school district or from the proceeds of the Board Local Levy authorized under Section 53A-17a-164.

B. The revenue from the Board Local Levy may be used for transporting students and for the replacement of school buses.

C. Transportation of students in areas where walking constitutes a hazardous condition may be provided from general funds from the school district or from the Board Local Levy.

(1) Hazardous conditions shall be determined by an analysis of the following factors:

(a) volume, type, and speed of vehicular traffic;

(b) age and condition of students traversing the area;

(c) condition of the roadway, sidewalks and applicable means of access in the area; and

(d) environmental conditions.

(2) A local board may designate hazardous conditions.

D. Guarantee Transportation Levy

(1) Appropriated funds under Section 53A-17a-127(7) shall be distributed according to each school district's proportional share of its qualifying state contribution.

(2) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

R277-600-11. Exceptions.

A. When undue hardships and inequities are created through exact application of these standards, school districts may request an exception to these rules from the State Superintendent on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation restrictions. The State Superintendent may consult with the Pupil Transportation Advisory Committee, designated in Section 53A-17a-127(5), in considering the exemption.

B(1) a school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occurs:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one;

(e) significant additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

KEY: school buses, school transportation
December 8, 2011 Art X Sec 3
Notice of Continuation January 8, 2008 53A-1-402(1)(d)
53A-17a-126 and 127

R277. Education, Administration.
R277-914. Career and Technical Student Organizations.
R277-914-1. Definitions.

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

B. "Career and technical education (CTE)" means organized educational programs which prepare individuals for college and careers in occupations where entry requirements generally do not require an advanced degree. These programs provide all students access to high school college and career Pathways, driven by a student education occupation plan (SEOP), through rigorous technical, academic, and employability instruction, culminating in essential life skills, certified occupational skills, employment and continued post-secondary education. Areas of study include agriculture; business; family and consumer sciences; health science; information technology; marketing; skilled and technical sciences; and technology and engineering education.

C. "Career and technical student organization (CTSO)" means a designated student organization placing emphasis on leadership and skill development; these organizations are integral to the career and technical programs at the secondary/postsecondary levels of instruction. Organizations have local, state and national affiliation.

D. "CTSO advisors" means professionals in identified program areas designated by USOE CTE staff to direct career and technical student leadership organizations statewide. The CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the USOE to administer and advise in a specific program area.

E. "One percent (1%) fiscal accounts" means one percent (1%) of the CTE add-on fund designated to be used for the management and operation of CTSOs at the state and local level. The funds designated for management of student organizations at the state level are dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.

F. "Program specialist" means a CTE specialist, typically a licensed educator, who has been assigned to work with a particular curriculum area. Examples are agriculture, business education, and health science.

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

R277-914-2. Authority and Purpose.

A. This rule is authorized by Section 53A-15-202(1) which directs the Board to establish minimum standards for career and technical programs in the public education system; Section 53A-15-202(3) which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education, 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 make CTSOs fiscally accountable to the Board and to provide procedures and supervision toward that end.

R277-914-3. Student Organization Advisory Boards.

A. Each student organization designated by the USOE State Director for CTE shall establish a statewide advisory board of not less than three members, one of which must be the USOE program specialist.

B. Each program area CTSO shall develop and follow organization by-laws.

C. Each CTSO advisory board shall have advisory fiscal oversight for the organization.

D. Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

R277-914-4. Fiscal Oversight of Student Organizations.

A. The CTSO advisory boards shall act consistent with fiscal procedures provided by the USOE State Director for CTE or the State Director's designee.

B. Each CTSO advisory board shall submit all required financial records for auditing on a schedule established by the State Director for CTE.

C. Individual CTSO financial records shall be submitted for auditing whenever there is a change in the CTSO advisor, if requested by the State Director for CTE.

D. The State Director for CTE shall designate a school district or institution to act as the fiscal agent for the CTSO fiscal accounts.

E. The State Director for CTE or designee shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal accounts.

KEY: secondary education, career and technical education*
December 8, 2011 53A-15-202(1)
Notice of Continuation October 27, 2011 53A-15-202 (3)
53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.
R307-121-1. Authorization and Purpose.

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase, in accordance with 59-7-605(3) or 59-10-1009(3), to the executive secretary for an OEM vehicle or the conversion of a motor vehicle for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Fuel economy standards" means fuel economy standards as defined in Subsection 59-7-605(1)(f) and 59-10-1009(1)(f) or 31 miles per gallon equivalent for a plug-in electric drive motor vehicle.

"Miles per gallon equivalent" means the miles a vehicle can drive with the energy equivalent of one gallon of gasoline.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(i) and 59-10-1009(1)(i).

"Plug-in Electric Drive Motor Vehicle" means plug-in electric drive motor vehicle as defined in Subsection 59-7-605(1)(a)(ii) or 59-10-1009(1)(a)(ii).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective February 1, 2010.

R307-121-3. Proof of Purchase to Demonstrate Eligibility for OEM Compressed Natural Gas Vehicles.

To demonstrate that an OEM Compressed Natural Gas motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the executive secretary:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM Compressed Natural Gas vehicle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the vehicle identification number (VIN), the technician's ASE certification number, and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration.

R307-121-4. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles that meet Air Quality and Fuel Economy Standards.

To demonstrate that a motor vehicle is eligible for the tax credit based on air quality and fuel economy standards, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the executive secretary:

(1) a copy of the motor vehicle's window sticker, which includes its VIN, or equivalent manufacturer's documentation;

(2) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase;

(3) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle;

(4) the underhood identification number or engine group of the motor vehicle; and

(5) a copy of the current Utah vehicle registration.

R307-121-5. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to Natural Gas or Propane.

To demonstrate that a conversion of a motor vehicle to be fueled by natural gas or propane is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) a copy of the motor vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(i)(C) or 59-7-605(1)(c)(i)(C);

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-121-6. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to Electricity.

(1) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:

(a) the VIN;

(b) the fuel type before conversion;

(c) the fuel type after conversion;

(d) each of the following:

(i) the conversion equipment manufacturer,

(ii) the conversion equipment model number,
(iii) the date of the conversion, and
(iv) the name, address, and phone number of the person that converted the motor vehicle;
(e) an original or copy of the purchase order, customer invoice, or receipt; and
(f) a copy of the current Utah vehicle registration.
(2) If the converted motor vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and that the converted motor vehicle does not have any auxiliary source of combustion emissions.
(3) If the converted motor vehicle has an auxiliary source of combustion emissions, then the applicant shall submit:
(a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program, or
(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and
(c) Provide the EPA Certificate of Conformity or equivalent documentation that is consistent with requirements outlined in 76 FR 19830 April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(i)(C) or 59-7-605(1)(c)(i)(C).

R307-121-7. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:
(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;
(2) the fuel type before conversion;
(3) the fuel type after conversion;
(4) the conversion equipment manufacturer and model number;
(5) the date of the conversion;
(6) the name, address and phone number of the person that converted the special mobile equipment; and
(7) an original or copy of the purchase order, customer invoice, or receipt; and
(8) the EPA Certificate of Conformity, or an Executive Order from the California Resource Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(c)(i)(C) or 59-7-605(1)(c)(i)(C).

R307-121-8. Applicability.

(1) The definitions of plug-in electric drive motor vehicle and fuel economy standards in R307-121-2 shall apply to all purchases as of January 1, 2011.
(2) Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

KEY: air pollution, alternative fuels, tax credits, motor vehicles

January 1, 2012	**19-2-104**
Notice of Continuation January 6, 2009	**19-1-402**
	59-7-605
	59-10-1009

R309. Environmental Quality, Drinking Water.
R309-405. Compliance and Enforcement: Administrative Penalty.
R309-405-1. Authority.

Utah Code Annotated, Sections 19-4-104 and 19-4-109

R309-405-2. Purpose, Scope, and Applicability.

(1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

R309-405-3. Limits on Authority and Liability.

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.

(1) Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

(a) Major Violations: $600 to $1000 per day for each day of violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. Specific violations that are subject to a major violation category can include the following:

(i) Violations subject to $1000 per day penalty:

(A) Any violation defined by R309-220-5 which would trigger a Tier 1 public notification.

(B) Not having any elements of a source protection plan as required in R309-600 for ground water sources and R309-605 for surface water sources.

(C) Failure to respond to an Administrative Order issued by the Drinking Water Board.

(D) Introduction by the water system of a source water that has not been evaluated and approved for use as a public drinking water source under R309-515.

(E) Construction or use of an interconnection to another public water system which has not been reviewed and approved in accordance with R309-550-9.

(F) Having over 20 IPS points (Improvement Priority System points based on R309-400, the Water System Rating Criteria) specifically for operating pressures below that required by R309-105-9.

(G) Having 50 IPS points specifically for an inadequate well seal as required in R309-515.

(H) Having over 50 IPS points (not including the deficiencies in (F) and (G) above) specifically assessed in the physical facility section of an IPS report.

(I) Use of a surface water source without proper filtration treatment in accordance with R309-525 or 530.

(J) Exceeding the rated water treatment plant capacity as determined by review under R309-525 or 530.

(K) Insufficient disinfection contact time as evaluated under R309-215-7.

(ii) Violations subject to $800 per day penalty:

(A) Not having any of the required components of a cross connection control program in place as required by R309-105-12.

(B) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(iii -iv) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(b) Moderate Violations: $400 to $600 per day for each day of violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. Specific violations that are subject to a moderate violation category can include the following:

(i) Violations subject to $600 penalty:

(A) Any violation defined by R309-220-6 which would trigger a Tier 2 public notification.

(B) Having a disapproved status on a source protection plan (R309-600 and 605) for a period longer than 90 days.

(C) Installation or use of disinfection equipment that has not been evaluated and approved for use under R309-520.

(D) Having measured turbidity spikes of greater than 0.5 or 1.0 NTU in two consecutive fifteen minute readings as defined in R309-215-9(4)(b)(i) or (ii) respectively.

(E) Insufficient source capacity, storage capacity, or delivery capacity as established by review of the system design under R309-500 through 550.

(F) Not complying with plan approval requirements as set forth in R309-500. The term infrastructure can include the disinfection process, surface water treatment process, and physical facilities such as water treatment plants, storage reservoirs, sources and distribution piping.

(c) Minor Violations: Up to $400 per day for each day of violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. Specific violations that are subject to a minor violation category can include the following:

(i) Violations subject to $400 per day penalty:

(A) Any violation defined by R309-220-7 which would trigger a Tier 3 public notification or a violation of the monitoring requirements of R309-515-4(5), except for turbidity monitoring for surface water treatment facilities and violations termed as minor monitoring as outlined in R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(B) Failure to upgrade a Preliminary Evaluation Report for a source protection plan as required in R309-600 and 605.

(C) Failure to update a source protection plan as required in R309-600 and 605.

(D) Construction or use of a storage reservoir that has not been evaluated for use under R309-545.

(ii) Violations subject to $200 per day penalty:

(A) Lacking individual components of a cross connection control program as required by R309-105-12.

(B) Not having a certified operator on staff as required in R309-300-5(10) after 1 year or 4 operator certification exam cycles.

(C) Any minor monitoring violation as defined by R309-400-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(D) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(i-ii) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(2) The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under R305-6 and the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

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

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

(a) The project must be in addition to all regulatory compliance obligations;

(b) The project must relate to some or all of the issues of the violation;

(c) The project must primarily benefit the drinking water users;

(d) The project must be defined, measurable and have a beginning and ending date;

(e) The project must be agreed to in writing between the public water system and the Executive Secretary;

(f) The project must not generate the public perception favoring violations of the laws and rules.

R309-405-7. Penalty Policy for Civil Proceedings.

Pursuant to Utah Code Annotated Section 19-4-109(2)(b), any person who willfully violates any rule or order made or issued pursuant to the Utah Safe Drinking Water Act, Utah Code Annotated Section 19-4-101 et seq, is subject to a civil penalty of not more than $5000 per day for each day of violation. The Board and Executive Secretary shall apply the provisions of R309-405-4, 5, and 6 in pursuing or resolving willful violations except that the penalty range per day for each day of violation for major violations shall be $3000 to $5000, for moderate violations shall be $2000 to $3000, and for minor violations shall be up to $2000.

KEY: drinking water, environmental protection, administrative procedures, penalties
March 8, 2006 19-4-104
Notice of Continuation March 22, 2010 63G-4-202

R333. Financial Institutions, Banks.
R333-13. Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions.
R333-13-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-325.

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

(3) This rule designates which one or more federal laws the department may enforce and are applicable to banks subject to the jurisdiction of the department.

R333-13-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R333-13-3. Applicable Federal Law.

In accordance with Section 7-1-325, the following federal laws are applicable to banks subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
December 22, 2006 7-1-325(2)

Notice of Continuation December 9, 2011

R339. Financial Institutions, Industrial Loan Corporations.
R339-12. Rule Designating Applicable Federal Law for Industrial Loan Corporations Subject to the Jurisdiction of the Department of Financial Institutions.
R339-12-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-325.

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

(3) This rule designates which one or more federal laws the department may enforce and are applicable to industrial loan corporations subject to the jurisdiction of the department.

R339-12-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R339-12-3. Applicable Federal Law.

In accordance with Section 7-1-325, the following federal laws are applicable to industrial loan corporations subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
December 22, 2006 7-1-325(2)

Notice of Continuation December 9, 2011

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, Hepatitis B or C;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(h) providing false or misleading information to the Commission or a representative of the Commission;

(i) behaving at any time or place in a manner which is deemed by the Commission to reflect discredit to unarmed combat;

(j) engaging in any activity or practice that is detrimental to the best interests of unarmed combat;

(k) knowing that an unarmed contestant suffered a serious injury prior to a contest or exhibition and failing or refusing to inform the Commission about that serious injury.

(l) conviction of a felony or misdemeanor, except for minor traffic violations.

(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, matchmaker, referee, or judge.

(2) A licensed amateur contestant shall not compete against a professional unarmed combat contestant, or receive a purse, or a percentage of ticket sales, and/or other remuneration (other than for reimbursement for reasonable travel expenses and per diem, consistent with IRS guidelines).

(3) A licensed manager or contestant shall not referee or judge any event or contestant affiliated with a gym or training facility they have been involved with during the past 12 months.

(4) A promoter shall not hold a license as a referee, judge, second 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. or total sum of the contestant purses, officials fees and estimated commission fees, whichever is greater. Promoters who have held less than 5 unarmed combat events in the state of Utah shall deposit an additional $10,000 minimum Cashier's Check or Bank Draft with the commission no later than 7 days prior to the event or the event may be cancelled by the commission.

(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, 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.

(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) The promoter shall be responsible for payment of any commission fee(s) deducted from a contestant's purse, if the fees are not collected directly from the contestant at the conclusion of the bout or if the contestant fails to compete in the event.

(11) 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 for injuries sustained during a contest or exhibition, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall also provide life insurance coverage of $10,000 for each contestant in case of death resulting from injuries sustained during a contest or exhibition.

(d) The required medical insurance and life insurance coverage shall not be waived by the contestant or any other party.

(e) A contestant seeking medical insurance reimbursement for injuries sustained during an unarmed combat event shall obtain medical treatment for their injuries within 72 hours of their bout and maintain written records of their treatment, expenses and correspondence with the insurance provider and promoter to ensure coverage.

(f) The promoter shall not delay or circumvent the timely

processing of a claim submitted by a contestant injured during a contest or exhibition.

(12) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a) The event attendance fee established in the adopted fee schedule on the date of the event.

(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 internet, 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. These fees shall be paid to the commission within 45 days of the event. The promoter shall notify and provide the commission with certified copies of any contracts, agreements or transfers of any internet, broadcasting, television, and motion picture rights for any contest or exhibition within seven days of any such agreements. The commission may require a surety deposit be provided to the commission to ensure these requirements are met.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper, if not previously paid by the promoter.

(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) commission-approved gloves in whole, clean and in sanitary condition for each contestant;

(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) ring (cage) cleaning supplies, including bucket, towels and disinfectant;

(j) a public address system;

(k) a separate dressing room for each sex, if contestants of both sexes are participating;

(l) a separate room for physical examinations;

(m) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(n) adequate security personnel; and

(o) 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 county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, for physical examinations or 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) Illicit drug;
(c) Stimulant; or

(d) 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 for any unarmed combatant 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 2011 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 for any unarmed combatant:

(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 licensee shall submit to a test of body fluids to determine the presence of drugs. A licensee shall 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 licensee 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 licensee'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 determines otherwise at a scheduled meeting, a licensee 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 discretional use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretional use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

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 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.

(2) Event officials are prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an event official shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an event official who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

(3) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(4) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(5) The Judges, Referee(s) and Timekeeper officiating 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 approves to officiate in a contest or exhibition.

(7) Event Officials' Minimum Fee Schedule:

TABLE

NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	$100.00	$50.00	$35.00
>5	$100.00	$100.00	$50.00

(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) The promoter may select the event announcer.

(2) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(3) 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.

(4) 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.

(3) An announcer shall not engage in unprofessional conduct.

(4) The announcer is prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an announcer shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an announcer who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

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.

R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.

(1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not sanctioned by an Association of Boxing Commission (ABC)

member commission for a period of 60 days from the date of the event.

(2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last competition in an unarmed combat event not sanctioned by an ABC member commission.

(3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

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 1bs. (69.853 kgs.) or less. Contestants who weigh more than 154 1bs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

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:

TABLE

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.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

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
December 15, 2011 63C-11-101 et seq.
Notice of Continuation May 10, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the Centers for Medicare and Medicaid Services and allowed under Section 1115(a) of the Social Security Act.

(2) The purpose of this rule is to establish eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(5) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

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

(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for the Primary Care Network program under contract with the Department.

(9) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(19)(a), (b), (c), (d) and (e).

(10) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program and has paid the enrollment fee.

(11) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the eligibility agency to enroll in and receive coverage under the Primary Care Network program.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(14) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time to represent future income.

(15) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.

(16) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(17) "Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(20) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

(21) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the UPP program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

(a) an individual with children under the age of 19 in the home;

(b) an individual without children under the age of 19 in the home;

(c) an individual who is enrolled in the PCN program;

(d) an individual who is enrolled in the UPP program;

(e) an individual who is enrolled in the General Assistance program;

(f) an individual who is enrolled in the Medicaid program within 30 days before the open enrollment period begins; or

(g) any group that the Department designates in advance to be consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.

(3) An applicant or enrollee must provide requested information and verification within the time limits given. The eligibility agency shall allow the client at least ten calendar days from the date of a request to provide information and may grant more time to provide information and verification upon request of the applicant or enrollee.

(4) An applicant or enrollee has a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) An applicant or enrollee may look at information in his case file that the eligibility agency uses to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any eligibility agency office.

(7) An individual must repay any benefits that the individual receives under PCN if the eligibility agency determines that the individual is not eligible to receive the benefits.

(8) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in PCN begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;

(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care

System;

(c) An enrollee leaves the household or dies;

(d) An enrollee or the household moves out of state;

(e) Change of address of an enrollee or the household; or

(f) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

(10) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.

R414-310-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-1, R414-302-2, R414-302-5, and R414-302-6 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of PCN.

(2) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Section R414-302-1 is not eligible for any services or benefits under PCN.

(3) An applicant or enrollee is not required to provide Duty of Support information to enroll in PCN. An individual who would be eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, cannot enroll in PCN.

(4) An individual who must pay a spenddown or premium to receive Medicaid can enroll in PCN if:

(a) the individual meets PCN program eligibility criteria in any month that the individual does not receive Medicaid; and

(b) the Department does not stop enrollment under the provisions of Subsection R414-310-16(2). If the Department stops enrollment, the individual must wait for an open enrollment period to enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of PCN.

(2) The Department shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-4.

R414-310-6. Residents of Institutions.

The provisions of Subsection R414-302-4(1) and (4) apply to applicants and enrollees of PCN.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2010 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2011, which are incorporated by reference.

(2) Subject to Subsection R414-310-7(10), an individual who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed., at the time of application is not eligible for enrollment in PCN. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. Nevertheless, an individual who is enrolled in the Utah Health Insurance Pool may enroll in PCN.

(3) The eligibility agency determines PCN eligibility for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer as follows:

(a) If the cost of the least expensive health insurance plan offered by the employer does not exceed 15% of the household's countable gross income as defined in this rule, the individual is not eligible for PCN.

(b) If the cost of the least expensive health insurance plan is 5% or more of the household's countable gross income, the individual may enroll in the employer's health insurance plan and the UPP program during an open enrollment period. The employer's health plan must meet the requirements of Subsection R414-320-2(19).

(c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's countable gross income, the individual may choose to enroll in either PCN or the UPP program. The following conditions apply:

(i) to enroll in UPP, the employer's health insurance plan must meet the requirements of Subsection R414-320-2(19); and

(ii) enrollment for the program that the individual chooses to enroll in has not been stopped under the provisions of Subsections R414-310-16(2) or R414-320-16(2).

(d) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in Subsection R414-320-2(19), the individual may only enroll in the PCN program.

(4) The eligibility agency considers the individual to have access to coverage even when the employer only offers coverage during an open enrollment period.

(5) The cost of coverage includes a deductible if the employer plan has a deductible that must be met before it will pay any claims. If the employee must be enrolled to enroll the spouse, the cost of coverage for the spouse includes the cost to enroll the employee and the spouse.

(6) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in PCN, even when the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in PCN. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for PCN ends once the individual becomes enrolled in the VA Health Care System.

(8) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(9) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for six months after the date that the earlier health insurance ends.

(a) To be eligible to enroll in PCN, the six-month ineligibility period must end by the earlier of the following dates:

(i) the last day of the open enrollment period during which the individual applies for PCN; or

(ii) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(b) If the six-month ineligibility period does not end by the earlier of the dates mentioned in Subsection R414-310-7(9)(a)(i)(ii), the eligibility agency shall deny the application.

(c) The effective date of enrollment in PCN must be after the six-month ineligibility period ends.

(10) An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the State Health Insurance Pool, or who is involuntarily

terminated from an employer's plan may be eligible for PCN without a six-month ineligibility period.

(a) An individual is eligible to enroll in PCN if the individual's health insurance coverage expires before the end of the calendar month that follows the month in which he applies for PCN.

(b) The PCN enrollment date must be after health insurance coverage ends.

(11) Notwithstanding the limitations in Section R414-310-7, an individual with creditable health coverage operated or financed by Indian Health Services may enroll in PCN.

(12) An individual must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(13) The eligibility agency shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify in the program.

R414-310-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for PCN:

(a) the individual;

(b) the individual's spouse living with the individual;

(c) any children of the individual or the individual's spouse who are under the age of 19 and living with the individual; and

(d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

(3) Any household member defined in Subsection R414-310-8(1) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency counts that individual's income the same way that it counts the income of a U.S. citizen, national, or qualified resident alien.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.

(2) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN. The effective date of enrollment for an applicant who meets the eligibility criteria for PCN and who turn 19 or 65 years of age is defined in Section R414-310-15.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in PCN, a household's countable gross income must be equal to or less than 150% of the federal, non-farm, poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under PCN. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. Income that is excluded under this section is not countable income.

(2) Any income in a trust that is available to, or is received by a household member, is income of the person for whom it is received. It is countable income if the eligibility agency counts that person's income to determine eligibility.

(3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(4) Rental income is countable income. The following expenses may be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that the household member continues to receive these payments during the certification period.

(7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income. Any portion of the payment that is for other family members counts as that family member's income.

(8) Child support payments that a household member receives for a dependent child living in the home are counted as that child's income, and do not count as income of the parent.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(10) Supplemental Security Income and State Supplemental payments are countable income.

(11) Income, unearned and earned, is deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

(12) Income that is excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference, is not countable.

(13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(15) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(16) Child Care Assistance under Title XX is not countable income.

(17) Reimbursements of Medicare premiums that an individual receives from the Social Security Administration are not countable income.

(18) If the spouse of an applicant or enrollee is under the age of 19, the eligibility agency counts that spouses earned and unearned income only if the spouse is the head of the

household.

(19) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(20) Reimbursements for employee work expenses incurred by an individual are not countable income.

(21) The value of food stamp assistance is not countable income.

(22) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(23) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

R414-310-11. Budgeting.

(1) Subject to the limitation in Subsection R414-310-10(18), the eligibility agency counts the gross income of all household members to determine the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The agency only deducts required expenses from the gross income to make an income available to the individual. No other deductions are allowed.

(2) The eligibility agency determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount and multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that the agency expects the household to receive or to become available to the household during the upcoming certification period. The eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The eligibility agency may request earlier years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the agency expects the household to receive each month of the certification period, or an annual amount that is prorated over the certification period. The eligibility agency may use different methods for different types of income that the same household receives.

(5) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent time period during which the individual had farm or self-employment income. The eligibility agency deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12. Assets.

There is no asset test for eligibility in PCN.

R414-310-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.

(2) To enroll in PCN, the applicant must complete and sign a written application or complete an online application during an open enrollment period. The provisions of Section R414-308-3 apply to PCN applicants.

(a) The eligibility agency shall review an application to determine eligibility for the PCN program if the application is pending approval when the open enrollment period begins.

(b) An applicant must follow the provisions of Section R414-310-14 to reapply for each recertification.

(3) The eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case in error.

(4) An applicant may withdraw an application for PCN any time before the eligibility agency completes an eligibility decision on the application.

(5) An applicant or enrollee must pay an annual enrollment fee for each 12-month recertification period to enroll in PCN. Upon the eligibility agency determining that the individual meets the eligibility criteria for enrollment, the individual must pay the enrollment fee when he applies and recertifies for PCN.

(a) An applicant must pay the enrollment fee within 30 days of the date on the notice that approves enrollment.

(b) To reenroll after the individual recertifies, the individual must pay the enrollment fee within 30 days of the date on the notice that approves enrollment, or by the end of the month that follows the review month, whichever is longer.

(c) The eligibility agency does not require an American Indian or Alaska Native to pay an enrollment fee. This enrollment fee waiver applies to both the individual and the spouse if both are enrolled and at least one of them is an American Indian or Alaska Native. If only one spouse is enrolled in PCN and is not an American Indian or Alaska Native, that spouse must pay the enrollment fee to enroll in PCN.

(d) Coverage may only become effective when the eligibility agency receives the enrollment fee. The provisions of Section R414-310-15 determine the effective date of enrollment. The eligibility agency shall deny enrollment if the individual does not pay the enrollment fee timely.

(e) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in PCN.

(f) The applicant or enrollee must pay the enrollment fee to DWS in cash, by debit or credit card, or by check or money order made out to DWS.

(g) The enrollment fee for an individual or married couple receiving General Assistance from DWS is $15. The enrollment

fee for an individual or couple who does not receive General Assistance but whose countable income is less than 50% of the federal poverty guideline applicable to their household size is $25. The enrollment fee for any other individual or married couple is $50.

(h) DWS may refund the enrollment fee if it decides that the person is ineligible for the program; however, DWS may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that DWS pays in error on behalf of the individual.

(6) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. The eligibility agency may not require a new application form; however, the household must provide requested information to determine eligibility for the spouse. The household must provide information about access to creditable health insurance that includes Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) The effective date of enrollment to add a spouse to an open PCN case is defined in Section R414-310-15. Coverage continues through the end of the certification period.

(b) The eligibility agency may not require a new enrollment fee to add a spouse during the certification period.

(c) The eligibility agency may not require a new income test to add a spouse for the months remaining in the certification period.

(d) An eligible household may only add a spouse if DWS does not stop enrollment under Subsection R414-310-16(2).

(e) The eligibility agency shall count income of the spouse and require payment of the enrollment fee at the next scheduled recertification.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2010 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the eligibility agency shall determine whether the individual is eligible for Medicaid or CHIP.

(a) An individual who qualifies for Medicaid without paying a spenddown, a poverty level pregnant woman asset copayment or an MWI premium cannot enroll in PCN. An applicant who turns 19 years of age during the application month and qualifies for Medicaid or CHIP during that month may enroll in PCN the following month in accordance with Section R414-310-15.

(b) If the individual appears to qualify for Medicaid, or CHIP, but additional information is required to make that determination, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual fails to provide the requested information.

(3) If the individual qualifies for Medicaid and PCN, but must pay a spenddown, poverty level, pregnant woman asset copayment or MWI premium to qualify for Medicaid, the individual may choose to enroll in the PCN program. If the PCN program is not in an enrollment period, the applicant may choose to enroll in Medicaid and wait for an open enrollment period to reapply for PCN.

(a) PCN does not cover prenatal or delivery services for a pregnant woman.

(b) PCN does not provide long-term care services in a medical institution or under a home and community-based waiver.

(4) To enroll, the individual must meet the eligibility criteria for enrollment in PCN, pay the enrollment fee, and enroll during an open enrollment period under Section R414-310-16.

(5) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.

(6) Upon determining that the applicant is eligible for PCN and upon receiving payment of the enrollment fee, the eligibility agency shall enroll the individual in PCN for a 12-month certification period. The eligibility agency shall end enrollment after the 12-month certification period.

(7) The eligibility agency shall provide an enrollee the opportunity to reenroll for a 12-month certification period when the certification period is near completion.

(a) The recertification is a reapplication to determine whether the enrollee is eligible to enroll in a new 12-month certification period.

(b) The eligibility agency shall notify the enrollee that PCN benefits end after the 12-month certification period.

(c) The eligibility agency shall inform the enrollee of the necessary steps to complete the recertification.

(8) At each recertification, the eligibility agency shall determine whether the enrollee is eligible for Medicaid. The individual may not reenroll in PCN if the individual qualifies for Medicaid without a cost. If the individual appears to qualify for Medicaid, the individual must provide additional information requested by the agency. The eligibility agency shall deny recertification if the individual fails to provide the requested information.

(9) The eligibility agency may request verification from the enrollee if the enrollee responds to the recertification request during the review month.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification.

(c) The eligibility agency shall determine eligibility if the enrollee provides all verification by the verification due date or by the end of the application processing period. The agency shall either approve a new 12-month certification period pending payment of the enrollment fee or deny eligibility for a new certification period. The eligibility agency shall notify the enrollee of its decision.

(10) If the enrollee fails to respond to the request for recertification or does not provide all verification with the application processing period, the enrollee may reapply in the calendar month that follows the effective closure date.

(a) The enrollee must reapply by responding to the recertification request and providing all requested verification; or

(b) file a new application before the end of the due process month that follows the review month.

(c) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification, provides all requested verification, or reapplies.

(d) The benefits become effective upon the enrollee paying the required enrollment fee if the eligibility agency approves an enrollee for a new 12-month certification period.

(e) The eligibility agency shall notify the enrollee if the agency does not approve an enrollee for the new certification period.

(11) The enrollee must wait for the next open enrollment period to reapply for PCN if the enrollee fails to respond to a request for recertification or does not file a new application before the end of the month that follows the review month.

R414-310-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

(1) Subject to the limitations in Sections R414-306-6 and R414-310-7, the effective date of PCN enrollment is the first day of the month in which the eligibility agency receives an application with the following exceptions:

(a) An applicant who turns 19 years of age during the application month and before the end of the open enrollment period in the application month is enrolled in PCN as follows:

(i) The eligibility agency shall enroll the applicant in Medicaid if the applicant qualifies for Medicaid during the application month without cost. In this instance, enrollment in PCN becomes effective for the month that follows the application month if the applicant neither qualifies for Medicaid nor qualifies without cost and chooses not to pay for Medicaid during that following month;

(ii) The eligibility agency shall enroll the applicant in CHIP if the applicant qualifies for enrollment in CHIP during the application month. Enrollment in PCN then becomes effective for the following month;

(iii) If the applicant is not eligible for Medicaid without cost and is not eligible for CHIP in the application month, enrollment in PCN becomes effective in the application month, but no earlier than when the applicant turns 19 years of age;

(iv) The applicant is not eligible for PCN if the applicant turns 19 years of age after the open enrollment period.

(b) An applicant who turns 65 years of age during the application month and applies before age 65 may enroll in PCN, which coverage becomes effective on the first day of the application month subject to the limitations in Section R414-310-15. The applicant is not eligible for PCN if the applicant is not eligible for Medicaid without cost in the application month. The eligibility agency shall end enrollment after the month in which the applicant turns 65 years of age.

(c) The eligibility agency shall deny enrollment to an individual if the individual applies for PCN upon turning 65 years of age.

(d) Subject to the limitations in Section R414-310-15 and the open enrollment requirement, the effective date of enrollment for the spouse of an enrollee is the first day of the month in which the enrollee requests to add the spouse.

(2) The eligibility agency shall enroll an applicant who meets all eligibility criteria and pays the enrollment fee for a 12-month certification period that begins with the first month of enrollment. The applicant must pay the enrollment fee before any benefits for a 12-month certification period become effective. The Department may not provide any benefits or pay for any services that an applicant receives before the effective date of enrollment.

(3) The effective date of reenrollment for PCN recertification is the first day after the review month, if the recertification is completed as described in either Subsection R414-310-14(9) or (10). The enrollee must continue to meet all eligibility criteria and pay the enrollment fee timely before benefits become effective for the new 12-month certification period.

(4) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns 65 years of age;

(b) the individual becomes a full-time student who is entitled to receive student health insurance and Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located; or

(e) the individual enters a public institution or an Institution for Mental Disease.

(5) The eligibility agency shall end PCN enrollment when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan, except under the following circumstances:

(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program. The individual must notify the eligibility agency within ten calendar days of enrolling in the plan or within ten days after coverage begins, whichever is longer, to switch to UPP. The individual must meet the requirements defined in Subsection R414-310-7(3)(b) and (c) except that the individual does not have to enroll in UPP during an open enrollment period;

(b) The eligibility agency shall continue PCN eligibility through the end of the certification period if the individual gains access to an employer-sponsored health plan but does not enroll in the plan. The eligibility agency shall end eligibility after the due process month if the enrollee does not return requested verification upon receiving proper notice;

(i) The individual is not eligible to reenroll for a new 12-month certification period if the enrollee has access to an employer-sponsored health plan that costs less than 15% of the enrollee's countable gross income at the next recertification;

(ii) The enrollee may choose to switch to UPP if the enrollee can enroll in the employer's health plan upon recertifying, and the plan meets the requirements of Subsection R414-310-7(3)(b) and (c) and costs 5% or more of the enrollee's countable gross income. The enrollee may reenroll in PCN if the cost exceeds 15% of the enrollee's countable gross income.

(6) An individual who enrolls in the Utah Health Insurance Pool does not lose PCN eligibility.

(7) An enrollee who fails to report changes or return verifications timely must repay any overpayment of benefits for which the individual is not eligible to receive.

(8) The individual may file a new application or make a request to the eligibility agency to reenroll if a PCN case closes for any reason.

(a) The individual must file a new application or make a request to reenroll within the calendar month that follows the effective closure date;

(b) The eligibility agency shall process the request as a new application. The agency shall waive the open enrollment period and determine whether the individual is still eligible for PCN;

(c) The eligibility agency shall continue eligibility through the end of the certification period if the agency determines that the individual is eligible for PCN;

(d) The eligibility agency shall approve the individual for a new certification period if the certification period ends when the agency determines that the individual is eligible. The individual must pay the enrollment fee for the new 12-month certification period;

(e) The eligibility agency shall deny the request to reenroll and send a notice to the individual if the agency determines that the individual is not eligible for PCN.

(9) The eligibility agency shall determine eligibility for PCN if a Medicaid-eligible recipient reports a change during a PCN enrollment month that makes the recipient ineligible for Medicaid or causes a spenddown. The effective date of enrollment for PCN is the day after the Medicaid case closes if the agency determines that the recipient is eligible for PCN and the recipient pays the enrollment fee timely.

(10) If a PCN case closes for any reason, other than to become covered by another Medicaid or UPP program, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

(11) If a PCN case closes because the enrollee is eligible for another Medicaid program or UPP, the individual may request to reenroll in PCN if there is no break in coverage between the programs, even if the eligibility agency ends open enrollment under Subsection R414-310-16(2).

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the rest of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in Section R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the certification period.

(b) If the 12-month certification period from the earlier enrollment ends, the individual may still reenroll in PCN. The individual must meet eligibility and income guidelines, and pay a new enrollment fee for the new 12-month certification period.

(12) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification, the eligibility agency shall end eligibility after the month in which the agency sends proper notice. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period and continue eligibility for the rest of the certification period if the agency determines that the enrollee is eligible for PCN. The eligibility agency shall send a denial notice to the enrollee if the agency determines that the enrollee is not eligible for PCN.

(13) A change in income does not make the enrollee ineligible for PCN; however, the individual may request the eligibility agency to make a Medicaid determination of eligibility.

(a) The eligibility agency shall change coverage to Medicaid and end PCN enrollment if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid without cost.

(b) The enrollee may choose to remain on PCN through the end of the certification period if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium.

R414-310-16. Enrollment Limitation.

(1) The eligibility agency shall limit enrollment in PCN.

(2) The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.

(4) If enrollment is not stopped, an individual may apply for PCN.

(5) An individual who becomes ineligible for Medicaid or CHIP, or who must pay a spenddown, poverty level, pregnant woman asset copayment or MWI premium for Medicaid, but who was not previously enrolled in PCN, may apply to enroll in PCN if the eligibility agency does not stop enrollment under Subsection R414-310-16(2). If the agency stops enrollment, the individual must wait for an open enrollment period to apply.

R414-310-17. Notice and Termination.

(1) The Department adopts 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, 2010 ed., which are incorporated by reference.

(2) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(3) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

The eligibility agency shall end enrollment after the 12-month certification period. An enrollee may reenroll for a new 12-month certification period without waiting for an open enrollment period by completing the recertification process, or by reapplying before the last day of the month that follows the effective closure date.

R414-310-18. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under PCN for which the individual is not eligible must repay the Department for the cost of the benefits that the individual receives.

(3) An alien and the alien's sponsor are jointly liable for benefits that an individual receives for which the individual is not eligible.

(4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a period in which the enrollee is not eligible to receive the benefits.

KEY: Medicaid, primary care, covered-at-work, demonstration

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26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-1. Authority.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Section 1115(a) of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The definitions in Sections 26-40-102 and Rule R414-1 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 through 64 years of age.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or "CHIP" means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(4) "Consolidated Omnibus Budget Reconciliation Act" or "COBRA" continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. To receive UPP reimbursement, the COBRA health plan must be an UPP Qualified Health Plan.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

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

(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for Utah's Premium Partnership for Health Insurance (UPP) program under contract with the Department.

(9) "Employer-sponsored health plan" means a health insurance plan offered through an employer. To receive UPP reimbursement, the employer must contribute at least 50 % of the cost of the health insurance premium of the employee and offer a UPP Qualified Health Plan.

(10) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(13) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(14) "Open enrollment" means a time period during which the eligibility agency accepts applications for the UPP program.

(15) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(16) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(17) "Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "UPP Qualified Health Plan" means a health planthat meets all of the following requirements:

(a) Health plan coverage includes:

(i) physician visits;

(ii) hospital inpatient services;

(iii) pharmacy services;

(iv) well child visits; and

(v) children's immunizations.

(b) Lifetime maximum benefits must be at least $1,000,000.

(c) The deductible may not exceed $2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(20) "Utah's Premium Partnership for Health Insurance" or "UPP" means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(21) "Verification" means the proof needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) adults with children living in the home;

(b) adults without children living in the home;

(c) adults enrolled in the PCN program;

(d) children enrolled in the CHIP program;

(e) adults or children who were enrolled in the Medicaid program within the last thirty days before the beginning of the open enrollment period; or

(f) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.

(3) An applicant or enrollee must provide requested information and verification within the time limits given. The eligibility agency shall allow the applicant or enrollee at least ten calendar days from the date of a request to provide information and may grant more time to provide information and verification upon request of the applicant or enrollee.

(4) The eligibility agency shall notify an applicantor enrollee about an eligibility determination or other action that affects eligibility.

(5) An applicant or enrollee may review information that the eligibility agency uses to make an eligibility determination.

(6) Eligibility policy manuals are available for review at any eligibility agency office and on the Internet. These manuals

are not available for review at call centers and outreach locations.

(7) An individual must repay any benefits that the individual receives under the UPP program if the eligibility agency determines that the individual is not eligible to receive the benefits.

(8) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of learning of the change. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage;

(b) An enrollee changes health insurance plans;

(c) An enrollee has a change in the amount of the premium that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage;

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System;

(e) An enrollee leaves the household or dies;

(f) An enrollee or the household moves out of state;

(g) Change of address of an enrollee or the household; or

(h) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

(11) An eligible child may choose to enroll in his parent's or guardian's employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's employer or COBRA continuation coverage, or may choose direct coverage through CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-1, R414-302-2, R414-302-5, and R414-302-6 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to adult applicants and enrollees of UPP.

(2) The provisions of Sections R382-10-6, R382-10-7, and R382-10-9 concerning U.S. citizenship, alien status, state residency and social security numbers apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Sections R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) The eligibility agency may not require an applicant or enrollee for the UPP program to provide Duty of Support information. An adult who is eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, may not enroll in the UPP program.

(5) An individual who must pay a spenddown, poverty level, pregnant woman asset copayment, or MWI premium to receive Medicaid may enroll in UPP if:

(a) the individual meets UPP program eligibility criteria;

(b) the individual elects not to receive Medicaid in the month that the individual wishes to enroll in UPP; and

(c) the eligibility agency continues open enrollment under the provisions of Section R414-320-16. If the agency stops enrollment, the individual must wait for an open enrollment period to enroll in UPP.

R414-320-5. Verification and Information Exchange.

(1) An applicant and enrollee must provide verification of eligibility factors as requested by the eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) The Department and the eligibility agency may release information concerning an applicant or enrollee and their household to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The eligibility agency shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-4.

R414-320-6. Residents of Institutions.

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2010 ed., which is incorporated by reference.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA continuation coverage may be eligible for UPP enrollment.

(4) The eligibility agency determines eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage as follows:

(a) If the individual's cost of the employer-sponsored coverage is less than 5% of the household's countable gross income, the individual is not eligible for the UPP program.

(b) If the cost of the employer-sponsored coverage equals or exceeds 5% of the household's gross income, the individual may enroll in UPP.

(c) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in UPP or may choose direct coverage through PCN if PCN enrollment continues under the provisions of Section R414-310-16.

(d) If the cost of the employer-sponsored coverage is greater than or equal to 5% of the household's countable gross income, a child may choose enrollment in UPP or direct coverage through CHIP.

(e) The cost of coverage includes a deductible if the employer plan has one that must be met before it will pay any claims. For a spouse or dependent child, if the employee must be enrolled to enroll the spouse or dependent child, the cost of coverage includes the cost to enroll the employee and the spouse or dependent child.

(5) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(6) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(7) An individual who voluntarily terminates health

insurance coverage is ineligible to enroll in UPP for 90 days after the earlier insurance ends.

(a) For an individual to enroll in UPP, the 90-day ineligibility period must expire:

(i) by the end of the open enrollment period during which the individual applies for UPP; or

(ii) by the end of the month which follows the month that the individual applies for UPP if the open enrollment period continues.

(b) If the 90-day ineligibility period does not end by the earlier of those two dates, the eligibility agency shall deny the application.

(c) An effective date of enrollment can only occur after the 90-day ineligibility period.

(8) An applicant, applicant's spouse, or dependent child may be eligible for enrollment in UPP without a 90-day ineligibility period if that person discontinues coverage under a COBRA plan, the Utah Comprehensive Health Insurance Pool, or who involuntarily discontinues coverage under an employer's plan.

(9) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their earlier insurance ended more than 90 days before the application date.

(10) An eligible individual with access to an employer's sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program to receive reimbursement for their employer-sponsored health plan.

(11) The individual must enroll in an UPP Qualified Health Plan either with an employer-sponsored health plan or a COBRA continuation health plan within 30 days of the date of the approval notice to enroll in UPP.

(12) Individuals must report at application and review whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's or parent's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

(13) The eligibility agency shall deny an application or review if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify.

R414-320-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:

(a) The individual;

(b) The individual's spouse living with the individual;

(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) The eligibility agency shall determine household composition for an eligible child in accordance with Subsection R382-10-11(1).

(3) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

(4) Any household member who is defined in Subsection R414-320-8(1) or Subsection R414-320-8(2) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency shall count that individual's income the same way that it counts the income of a U.S. citizen, national, or a qualified resident alien.

R414-320-9. Age Requirement.

(1) An individual must enroll in the UPP program before the end of the month in which he turns 65 years of age.

(a) An individual must apply for UPP before he turns 65 years of age.

(b) The eligibility agency shall deny eligibility if it does not receive an application before an individual turns 65 years of age.

R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency shall use the countable gross income of parents who live with a child to determine the child's eligibility. The agency may not count any income that it excludes under Section R414-320-10.

(4) Any income in a trust that a household member receives becomes the income of the individual for whom it is received. The income is countable if the eligibility agency uses it to determine eligibility.

(5) Payments that a household member receives from the Family Employment program, Working Toward Employment program, or from refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, are countable income.

(6) Rental income is countable income. The eligibility agency may deduct the following expenses:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

(7) The eligibility agency shall count as income cash contributions from non-household members unless the parties sign a written agreement to repay the funds.

(8) The eligibility agency shall count as income the interest earned from payments under a sales contract or a loan agreement to the extent that the agency continues to receive these payments during the certification period.

(9) The eligibility agency shall count as income needs-based veteran's pensions. Nevertheless, the agency counts only the portion of a Veteran's Administration check to which the individual is legally entitled. Any portion of the payment for another family member counts solely as that family member's income.

(10) The eligibility agency shall count solely as the child's income the child support payments that a parent receives for a dependent child when that child lives in the home.

(11) The eligibility agency may only count in-kind income when a non-household member provides goods or services to an individual in exchange for services that the individual performs.

(12) The eligibility agency shall count as income supplemental security income and state supplemental payments.

(13) The eligibility agency may not count income that is excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference.

(14) The eligibility agency may not count as income payments that are prohibited under other federal laws from being counted to determine eligibility for federally-funded

medical assistance programs.

(15) The eligibility agency may not count as income death benefits to the extent that the funds are spent on the deceased person's burial or last illness.

(16) The eligibility agency may not count as income a bona fide loan that an individual contracts in good faith and endorses in writing to repay.

(17) The eligibility agency may not count as income child care assistance under Title XX.

(18) The eligibility agency may not count as income reimbursements of Medicare premiums that an individual receives from the Social Security Administration or the Department.

(19) The eligibility agency may only count earned and unearned income of an eligible child who is under 19 years of age when the child is the head of the household. When the applicant or enrollee's spouse is under the age of 19, the agency may only count the spouse's earned and unearned income when the spouse is under the age of 19 and is the head of the household.

(20) The eligibility agency may not count as income educational income, such as educational loans, grants, scholarships, and work-study programs. The individual must verify enrollment in an educational program.

(21) The eligibility agency may not count reimbursements for employee work expenses incurred by an individual.

(22) The eligibility agency may not count the value of food stamp assistance.

(23) The eligibility agency may not count income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census.

(24) The eligibility agency may not count the additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, which an individual may receive from March 2009 through June 2010.

(25) The eligibility agency may not count the one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees.

(26) The eligibility agency may not count a COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No. 111 5, 123 Stat. 115.

R414-320-11. Budgeting.

(1) Subject to the limitations in Subsection R414-320-10(19), the eligibility agency shall count the gross income of the individual and the individual's spouse, or of an eligible child's parents to determine the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The eligibility agency shall deduct from the gross income only those expenses that are required to make income available to the individual.

(2) The eligibility agency determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount. The eligibility agency multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each review for continuing eligibility. The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The eligibility agency may request earlier years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the household expects to receive each month of the certification period, or an annual amount that is prorated over the certification period. The eligibility agency may use different methods for different types of income that a household receives.

(5) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent period that the individual had farm or self-employment income. The eligibility agency deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-320-12. Assets.

There is no asset test for eligibility in the UPP program.

R414-320-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program. The provisions of Section R414-308-3 apply to applicants of the UPP program.

(3) The eligibility agency shall reinstate an UPP case without requiring a new application if the case closes in error.

(4) An applicant may withdraw an application any time before the eligibility agency completes an eligibility decision on the application.

(5) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) The effective date of enrollment in UPP for the new household is defined in Section R414-320-15. Coverage continues through the end of the certification period.

(b) The eligibility agency may not require a new income test to add the new household member for the months remaining in the certification period.

(c) A household may add a new member only during an

open enrollment period under Section R414-320-16.

(d) The eligibility agency shall consider income of the new member at the next scheduled review.

(6) A child who loses Medicaid coverage when the child reaches the maximum age limit may enroll in UPP without waiting for the next open enrollment period.

(7) A child who loses Medicaid coverage because the child is no longer deprived of parental support and either does not qualify for any other Medicaid program, or only qualifies for a Medicaid program that requires paying a spenddown, may enroll in UPP without waiting for the next open enrollment period, unless the child qualifies for a different Medicaid program without cost.

(8) A child who is born to or placed for adoption with an enrollee may enroll in UPP without waiting for the next open enrollment period if the child does not qualify for a Medicaid program without cost.

R414-320-14. Eligibility Decisions and Eligibility Reviews.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2010 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the eligibility agency shall determine whether the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown, a poverty level, pregnant woman asset copayment, or an MWI premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual does not provide the requested information.

(a) If the individual must pay a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium to qualify for Medicaid, the individual may choose to enroll in the UPP program only during an open enrollment period and when the individual meets all the eligibility criteria.

(b) At each review for UPP reenrollment, the eligibility agency shall decide whether the enrollee is eligible for Medicaid. If the individual qualifies for Medicaid without a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium, the individual cannot reenroll in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual does not provide the requested information.

(3) To enroll, the individual must meet enrollment criteria during an open enrollment period under the provisions of Section R414-320-16.

(4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if that date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency uses available, reliable sources to gather necessary information to complete the review.

(6) The eligibility agency may ask the enrollee to respond to a request to complete the review process. The eligibility agency shall end the enrollee's eligibility after the review month if the enrollee fails to respond to the request. The eligibility agency shall treat any response as a new application if the enrollee responds to the request or reapplies after the review month. The application processing period applies for this new request for coverage.

(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee. The agency shall send a denial notice to the enrollee if the enrollee fails to return verification within the application processing period or if the agency determines that the enrollee is ineligible.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) The enrollee must reapply if the case closes for one or more calendar months.

(e) The new certification period begins the day after the closure date if the enrollee becomes eligible.

(7) The eligibility agency may request verification from the enrollee if the enrollee responds to the request during the review month.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The enrollee has at least ten calendar days from the notice date to provide the requested verification to the eligibility agency.

(8) The eligibility agency shall determine eligibility and notify the enrollee of its decision if the enrollee responds to the request and provides all verification by the verification due date.

(a) The eligibility agency shall send proper notice of an adverse decision when the decision affects eligibility for the due process month.

(b) The eligibility agency shall extend eligibility to the due process month when the agency sends proper notice of an adverse change. The eligibility agency shall send proper notice of the adverse decision that becomes effective after the due process month.

(9) The eligibility agency shall extend eligibility to the due process month if the enrollee responds to the request during the review month and the verification due date is during the due process month. The enrollee must provide all verification by the verification due date. If the enrollee responds to the request during the review month and the

(a) The eligibility agency shall determine eligibility and send proper notice of its decision when the enrollee provides all requested verification by the verification due date.

(b) The eligibility agency shall end eligibility after the month in which it sends proper notice of the closure date if the enrollee does not provide all requested verification by the verification due date.

(c) The eligibility agency shall treat the date that it receives all verification as a new application date if the enrollee returns all verification after the verification due date and before the effective closure date. The agency shall determine the enrollee's eligibility and send proper notice to the enrollee.

(d) The eligibility agency shall waive the open enrollment period during the due process month.

(e) The eligibility agency may not continue eligibility while it makes an eligibility determination. If the agency determines that an enrollee is eligible, the new certification date for the application is the day after the effective closure date.

(10) The eligibility agency shall provide ten-day notice of a case closure if the agency determines that the enrollee is ineligible or if the enrollee fails to provide verification by the verification due date.

R414-320-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

(1) Subject to Sections R414-320-7, R414-320-9 and

R414-320-16 and the limitations in Section R414-306-6, the effective date of enrollment in the UPP program is the first day of the application month. An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA continuation coverage within 30 days of receiving an approval notice from the eligibility agency. Eligibility for UPP is a qualifying event and employers must allow the individual to enroll in the health insurance plan upon approval.

(2) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium that the enrollee verifies to the eligibility agency. individual pays a premium for coverage for the spouse or dependent child.

(3) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage within 30 days of the date that the eligibility agency sends the UPP approval notice, DWS shall deny the application. The individual may reapply during another open enrollment period.

(4) The effective date of enrollment for a newborn or newly adopted child is the date of birth or the date that the child is placed for adoption if the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage and the family requests UPP coverage within 30 days of the birth or placement for adoption. If the family makes the request after 30 days of the birth or placement for adoption, enrollment becomes effective on the first day of the month in which the date of report occurs.

(5) An enrollee may request to add a spouse to UPP coverage during the certification period.

(a) If the spouse had previous UPP coverage, but became eligible for Medicaid or PCN, the enrollee may add the spouse to UPP whose eligibility becomes effective the month after coverage for Medicaid or PCN ends if there is no break in coverage.

(b) If the spouse did not have previous UPP coverage, but is moving directly from PCN to UPP coverage, the effective date of enrollment is the first day of the month after PCN ends.

(c) If the spouse is not moving directly from PCN to UPP coverage, the spouse may enroll in UPP during an open enrollment period. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(6) An enrollee may request to add a dependent child to UPP coverage during the certification period.

(a) If the child had previous UPP coverage, but became eligible for Medicaid or CHIP, the effective date of enrollment is first day of the month after Medicaid or CHIP ends if there is no break in coverage.

(b) If the child did not have previous UPP or CHIP coverage, the enrollee may add the child to UPP during an open enrollment period unless the child is a newborn or is a child who has been placed for adoption with the enrollee. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(7) The effective date of reenrollment in UPP after the eligibility agency completes the periodic eligibility review, is the first day after the due process month. The eligibility agency shall complete the review as described in Subsection R414-320-14(7) or (8), and the enrollee must continue to meet eligibility criteria.

(8) An individual who becomes eligible for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility. If the enrollee completes the review process and continues to be eligible, the recertification period continues for an additional 12 months, except that the eligibility agency may not count a due process month associated with a review in the new 12-month recertification period.

(9) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns 65 years of age;

(b) The individual becomes entitled to receive Medicare;

(c) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;

(d) The individual dies;

(e) The individual moves out of state or cannot be located; or

(f) The individual enters a public institution or an Institution for Mental Disease.

(10) The eligibility agency shall end eligibility if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage. The enrollee may switch to the PCN program for the rest of the certification period if the enrollee discontinues enrollment in employer-sponsored insurance involuntarily and does not enroll in COBRA continuation coverage, or if the individual discontinues COBRA coverage voluntarily or involuntarily.

(a) The enrollee must notify the eligibility agency within ten calendar days after the enrollee's insurance coverage ends.

(b) The eligibility agency shall complete a new eligibility determination and the individual must pay a PCN enrollment fee for the new 12-month certification period if the change occurs in the last month of the UPP certification period.

(11) When the enrollee reports other changes, the eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility. The eligibility agency shall send proper notice of changes in eligibility. The agency may end eligibility if the enrollee fails to report changes within ten calendar days. Other changes that may affect eligibility or benefits occur when:

(a) an enrollee changes health insurance plans or has a COBRA qualifying event; or

(b) the amount of the premium changes that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage.

(12) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(13) A child enrollee may discontinue employer-sponsored health insurance or COBRA continuation coverage and move to direct coverage under CHIP at any time during the certification period without any waiting period.

(14) An individual who is enrolled in PCN or CHIP and who enrolls in an employer-sponsored health plan or COBRA continuation coverage may switch to the UPP program. The individual must report to the eligibility agency within ten calendar days of signing up for an employer-sponsored plan or COBRA continuation coverage, or within ten days after coverage begins, whichever is later.

(a) The eligibility agency shall add the individual for the rest of the certification period if the household has an open UPP case.

(b) The eligibility agency shall approve a new 12-month certification period if the household does not have an open UPP case.

(15) If an UPP case closes for any reason, other than to become covered by another Medicaid program, PCN or CHIP, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(16) If an UPP case closes because the enrollee is eligible for another Medicaid program, PCN or CHIP, the individual may reenroll in UPP if there is no break in coverage between the programs, even when the eligibility agency stops enrollment under Subsection R414-320-16(2).

(a) The individual may reenroll during the12-month certification period. The eligibility agency may not require the individual to complete a new application or have a new income eligibility determination.

(b) The individual may still reenroll during the12-month certification period. The individual must meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

(17) The eligibility agency shall end eligibility after the month in which the agency sends proper notice if the agency requests verification of a reported change and the enrollee fails to return the verification. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period, and if the enrollee is eligible, continue eligibility for the rest of the certification period. The eligibility agency shall send a denial notice to the enrollee if the enrollee is ineligible.

(18) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.

(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.

(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without a spenddown, MWI premium or a poverty level, pregnant woman asset copayment, the enrollee may choose to remain on UPP.

R414-320-16. Open Enrollment Period.

(1) The eligibility agency accepts applications for enrollment at times when sufficient funding is available to justify enrollment of more individuals. The eligibility agency limits the number it enrolls according to the funds available for the program.

(2) The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.

R414-320-17. Notice and Termination.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The eligibility agency shall end an individual's enrollment if the individual fails to complete the periodic review process on time.

(4) The eligibility agency shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. The notice must include:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support an adverse action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The eligibility agency need not give ten-day notice of termination if:

(a) the enrollee is deceased;

(b) the enrollee moves out-of-state and is not expected to return; or

(c) the enrollee enters a public institution or institution for mental disease.

R414-320-18. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is not eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under the UPP program for which the individual is not eligible must repay the Department for the cost of the benefits that he receives.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a period that the enrollee is not eligible to receive the benefits.

R414-320-19. Benefits.

(1) The UPP program shall provide cash reimbursement to enrollees.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan or COBRA continuation coverage.

(3) The UPP program may reimburse an adult up to $150 each month.

(4) The UPP program may reimburse a child up to $120 each month for medical coverage and an additional $20 if the child elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, a child may receive cash reimbursement up to $120 for the medical insurance cost and may receive dental-only benefits through CHIP.

(b) When the employer-sponsored insurance includes dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage and receive an additional reimbursement of up to $20. The enrollee may also elect to receive dental-only benefits through CHIP.

KEY: CHIP, Medicaid, PCN, UPP
December 23, 2011 26-18-3
Notice of Continuation October 13, 2011 26-1-5

R432. Health, Family Health and Preparedness, Licensing.
R432-500. Freestanding Ambulatory Surgical Center Rules.
R432-500-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-500-2. Purpose.

The purpose of this rule is to establish standards for the operation of a freestanding surgical facility which provides surgical services to patients not requiring hospitalization.

R432-500-3. Time for Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-500-4. Definitions.

(1) See common definitions R432-1-3.

(2) Special definitions.

(a) "Anesthesia service" includes services for all patients who:

(i) receive general, spinal, or other major regional anesthesia, or

(ii) undergo surgery or other procedures when receiving either or both of the following:

(A) general, spinal, or other regional anesthesia;

(B) intravenous, intramuscular, or inhalation sedation or analgesia that may result in the loss of the patient's protective reflexes.

(b) "Continual" means repeated regularly and frequently in steady rapid succession.

(c) "Continuous" means prolonged without any interruption at any time.

(d) "Monitored Anesthesia Care" includes intraoperative monitoring by a qualified anesthetist of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating, planning, and administering anesthesia services required, and providing indicated postoperative anesthesia services.

(e) "Qualified Anesthetist" means an anesthesiologist, another qualified physician, oral surgeon, or certified registered nurse anesthetist, who:

(i) is licensed to provide anesthesia services in accordance with Utah laws for occupational and professional licensing,

(ii) is a member of the staff of the ambulatory surgical center,

(iii) has been determined by the facility to be competent,

(iv) has been granted privileges to provide anesthesia services to patients in the facility; and

(v) if the qualified anesthetist is a qualified physician or oral surgeon, has documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and is able to perform at least the following:

(A) safely render the patient insensible to pain during the performance of surgical, and other pain producing clinical procedures;

(B) monitor and sustain life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(f) "Extended Recovery Services" means patient care after the initial post surgery recovery period.

(g) "Initial Post Surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.

(h) "Licensed Professional" means a qualified physician or oral surgeon who is involved in the preoperative assessment of the patient and has ensured that a qualified anesthetist is providing anesthesia services.

(i) "upon the request of" means a patient specific order of a licensed professional working within the scope of his license.

R432-500-5. Licensure.

(1) License Required. See R432-2.

(2) Exempt facilities shall meet the provisions of Section 26-21-7. Physician based surgical centers shall request an exemption to this rule in order to apply for Medicaid/Medicare certification.

R432-500-6. General Construction Rules.

(1) See R432-13. Ambulatory Surgical Center Construction Rule.

R432-500-7. Administration and Organization.

(1) Direction.

(a) Each facility shall be operated by a licensee.

(b) If the licensee is other than a single individual, there shall be an organized functioning governing authority to assure accountability.

(c) The governing authority shall meet at least quarterly and keep written minutes of its meetings.

(2) Responsibilities.

(a) The licensee shall have the overall responsibility and authority for the organization.

(b) Responsibilities shall include at least the following:

(i) Comply with all applicable federal, state and local laws, rules and requirements;

(ii) Adopt and institute bylaws, operating room protocols, policies and procedures relative to the operation of the facility;

(iii) Appoint, in writing, a qualified administrator (the licensee, administrator, or medical director may be the same person) to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(iv) Appoint, in writing, a qualified medical director to advise and be accountable to the licensee for the quality of patient care;

(v) Ensure that patients requiring hospitalization are not admitted to the facility;

(vi) Appoint members of the medical staff and delineate their clinical privileges.

R432-500-8. Administrator.

(1) Direction.

(a) Each facility shall designate in writing an administrator who shall have freedom from other responsibilities to be on the premises of the facility a sufficient number of hours in the business day to manage the facility and to respond to appropriate requests by the Department.

(b) The administrator shall designate a person, in writing, to act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being and shall be available at the facility.

(ii) It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(c) The administrator shall be the direct representative of the board in the management of the facility and shall be responsible to the board for the performance of his duties.

(2) Qualifications.

The administrator and his designee shall be 21 years or older and shall be experienced in administration and supervision of personnel and shall be knowledgeable about the practice of medicine to interpret and be conversant in surgery protocols.

(3) Duties and Responsibilities.

(a) The administrator's responsibilities shall be written in a job description and shall be available for Department review.

(b) Responsibilities shall include:

(i) Compliance with all applicable federal, state and local laws, and facility bylaws;

(ii) Develop, evaluate, update, and implement facility policies and procedures annually;

(iii) Maintain an adequate number of qualified and competent staff to meet the needs of patients;

(iv) Develop clear and complete job descriptions for each position;

(v) Notify appropriate authorities when a reportable disease is diagnosed;

(vi) Review all incident and accident reports and take appropriate action;

(vii) Establish a quality assurance committee that will respond to the quality and appropriateness of services and respond to the recommendations made by the committee;

(viii) Secure through contracts the necessary services not provided directly by the facility;

(ix) Receive and respond to the licensure inspection report by the Department.

R432-500-9. Medical Director.

(1) Direction.

(a) The licensee of the surgical facility shall retain, by formal agreement, a qualified physician to serve as medical director.

(b) The medical director shall have freedom from other responsibilities to assume professional, organizational, and administrative responsibility.

(c) The medical director shall be accountable to the governing authority for the quality of services rendered.

(2) Qualifications.

The physician designated as the medical director shall have at least the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have training and expertise in those branches of surgery and anesthesia services offered to provide supervision at the facility.

(3) Responsibilities.

(a) The medical director shall have overall responsibility for surgery and anesthesia services delivered in the facility.

(b) Applicable laws relating to use of anesthesia, professional licensure acts and facility protocols shall govern both medical staff and employee performance.

(c) The medical director shall be responsible for at least:

(i) Review and update facility protocols;

(ii) Periodically conduct reappraisals of medical staff privileges and revise those privileges as appropriate;

(iii) Recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend facility privileges to be granted;

(iv) Establish and maintain a quality assurance mechanism to review identified problems and take appropriate action;

(v) Coordinate, direct and evaluate all clinical operations of the facility;

(vi) Evaluate and recommend the type and amount of equipment needed in the facility;

(vii) Assure that a qualified physician available when patients are in the facility;

(viii) Ensure physician documentation is recorded immediately and reflects an accurate description of care given;

(ix) Assure that planned surgical procedures are within the scope of privileges granted to the physicians.

R432-500-10. Director of Nursing Services.

(1) Direction.

Each facility shall employ and designate in writing a registered nurse who will be responsible for the supervision and direction of the nursing staff and the operating room suite.

(2) Qualifications.

The director of nursing shall be a registered nurse who is qualified by training or education to supervise nursing services.

(3) Responsibilities.

(a) The director of nursing, in consultation with the medical director shall plan and direct the delivery of nursing care.

(b) The director of nursing shall be responsible for at least:

(i) Maintain qualified health care personnel that are available and used as needed under the supervision of a registered nurse;

(ii) Assure a licensed nurse is on duty when patients are in the facility;

(iii) Maintain the operating room register;

(iv) Review and update nursing care policies and procedures;

(v) Ensure that nursing documentation is recorded immediately and reflects an accurate description of care given;

(vi) Maintain policies and procedures for pre-operative and post-operative care;

(vii) Ensure post-operative instructions are in writing and are reviewed with the patient or other responsible person following surgery;

(viii) Supervise all non-physician direct patient care services, as defined in facility policy;

(ix) Review identified problems with the medical director through quality assurance mechanisms and take appropriate action;

(x) Ensure patient care policies including admission and discharge policies are reviewed annually. Patient care policies shall be developed and revised by a group representing all professionals involved in patient care.

R432-500-11. Staff and Personnel.

(1) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all personnel which shall protect the health an safety of personnel and patients. Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702. Communicable Disease rules.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis, from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(c) This health screening shall be performed within the first two weeks of employment and as defined in facility protocols.

(d) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(f) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

(2) In-service Training and Orientation.

(a) There shall be planned and documented in-service

training programs for all personnel.

(b) The frequency and content of training programs shall be defined in facility policy.

(c) The training program shall include a review of all facility policies and procedures.

(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.

R432-500-12. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for services not provided directly by the facility.

(b) Contracts shall include a statement that the contractor will conform to the standards required by these rules.

(2) Transfer Agreements.

(a) The licensee shall maintain hospital admitting privileges for all staff or a written transfer agreement with one or more full-service licensed hospitals located within an overall travel time of 15 minutes or less from the facility.

(b) The transfer agreement shall include provisions for:

(i) Transfer of information needed for proper care and treatment of the patient transferred;

(ii) Security and accountability of the personal effects of the patient being transferred.

R432-500-13. Quality Assurance.

(1) The administrator and the medical director, shall establish a quality assurance program and a quality assurance committee to review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care, and safety.

(2) General Provisions Quality Assurance Committee.

(a) The committee shall include a representative from the facility administration, the medical director, the director of nursing, and may also include other representatives, as appropriate.

(b) The committee shall meet at least quarterly and keep written minutes available for Department review.

(c) The committee shall report findings and concerns to the medical director, administrator, and governing authority as applicable.

R432-500-14. Emergency and Disaster.

Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(1) General Provisions.

(a) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator should make every effort to get to the facility to relieve the administrator designee to take charge during an emergency.

(b) The licensee and the administrator shall be responsible for the development of a written emergency and disaster plan, coordinated with state and local emergency or disaster authorities.

(c) The plan shall be made available to all staff to assure prompt and efficient implementation (see R432-500-14(2)).

(d) The administrator and the licensee shall review and update the plan at least annually.

(e) The names and telephone numbers of facility staff, emergency medical personnel, and emergency service systems shall be conveniently posted.

(2) Emergency and Disaster Plan and Drills.

The facility shall have an internal and external emergency or disaster plan including the following:

(a) Evacuation of occupants to a safe place, as specified;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The receiving of patients to the facility from another location, including housing, staffing, medication handling, and record maintenance and protection;

(d) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(e) An inventory of available personnel, equipment, supplies and instructions and how to acquire additional assistance;

(f) Staff assignment for specific tasks during an emergency;

(g) Names and telephone numbers of on-call physicians and staff at each telephone;

(h) Documentation of emergency events;

(i) Emergency or Disaster drills, other than fire drills shall be held at least biannually, at least one per shift, with a record of time and date maintained. Actual evacuation of patients during a drill is optional;

(j) Notification of the Department if the facility is evacuated.

(3) Fire Emergencies.

The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) An evacuation plan shall identify:

(i) evacuation routes,

(ii) location of fire alarm boxes and fire extinguishers, and

(iii) emergency telephone numbers including the local fire department.

(b) The evacuation plan shall be posted at several locations throughout the facility.

(c) The emergency plan shall include fire containment procedures and how to use the facility alarm systems, extinguishers, and signals.

(d) Fire drills shall be held at least quarterly on each shift and documentation of the drill shall include a record of the time and date. Actual evacuation of patients during a drill is optional.

(4) Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-500-15. Patients' Rights.

(1) Written policies regarding the patient rights shall be made available.

(2) The policies and procedures shall ensure that each patient admitted to the facility shall be treated as an individual with dignity and respect and have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of the patient rights and of all facility rules that pertain to the patient;

(b) To be fully informed prior to admission of the treatment to be received, potential complications, and outcome;

(c) To refuse treatment and to be informed of the medical consequences of such refusal;

(d) 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;

(e) To participate in decisions involved in their health care;

(f) To refuse to participate in experimental research;

(g) To be assured 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;

(h) To be treated with consideration, respect, and full

recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-500-16. Patient Care Services.

(1) Each patient shall be under the care of a member of the medical staff or under contract.

(2) Medical Staff Bylaws shall establish the credentialing process and shall include the delineation of professional staff privileges.

(3) Responsibilities.

(a) The attending member of the medical staff including any non-physician specialist shall be responsible for the quality of patient care delivered and the supervision of patients admitted to the facility.

(b) All facility staff members and those under contract by the facility shall comply with current laws, facility protocols and current standards as interpreted by the medical director.

R432-500-17. Extended Recovery Services.

(1) Extended recovery care services provided by a Freestanding Ambulatory Surgical Center shall not exceed 24 hours. The facility shall provide services to no more than three patients, anywhere within the facility, between the hours of 10:00 p.m. and 6:00 a.m.

(2) Extended recovery care services shall be integrated with other departments and services of the facility.

(3) Extended recovery care services shall have policies and procedures that describe the nature and extent of the extended recovery services provided, which are consistent with ambulatory surgery and anesthesia services.

(4) A minimum of two health care workers, one of which shall be a registered nurse with Advanced Cardiac Life Support certification (ACLS), shall be on duty when patients are in the extended recovery care unit.

(5) In addition to the items required in a patient's medical record under section R432-500-22, the physician shall document the following:

(a) the reason(s) or need for a patient's admission to the extended recovery service, and

(b) dietary orders to meet the nutritional needs of the patient.

(6) The facility shall obtain a Food Service Establishment Permit, if required by the local health department.

(a) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(b) All personnel who prepare or serve food shall observe personal hygiene and sanitation practices which protect food from contamination.

R432-500-18. Nursing Services.

(1) Direction.

Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) Organization.

All non-medical patient services shall be under the general direction of the director of nursing, except as exempted by facility policy.

(3) Responsibilities.

(a) Nursing service personnel shall be responsible to plan and deliver nursing care, and assist with treatments and procedures.

(b) All nursing personnel shall maintain a current Utah license.

(4) Equipment.

(a) The facility shall provide equipment in good working order to meet the needs of patients.

(b) The type and amount of equipment shall be indicated in facility policy and approved by the medical director.

(c) The following equipment shall be available to the operating suite:

(i) Emergency call system;

(ii) Cardiac Monitor;

(iii) Ventilation support system;

(iv) Defibrillator;

(v) Suction equipment;

(vi) Equipment for Cardiopulmonary Resuscitation and Airway Management;

(vii) Portable Oxygen; and

(viii) Emergency Cart.

R432-500-19. Pharmacy Service.

Pharmacy space and equipment required depends upon the type of drug distribution system used, number of patients served, and extent of shared or purchased services.

(1) Direction.

(a) There shall be a pharmacy supply under the direction of a pharmacist.

(b) If the facility does not have a staff pharmacist, it shall retain a consultant pharmacist by written contract.

(c) There shall be written policies and procedures to govern the acquisition, storage, and disposal of medications.

(d) The medical director and facility pharmacist shall approve these policies.

(e) The quality and appropriateness of medication usage shall be monitored by the Quality Assurance Committee.

(2) Pharmacy Supply.

(a) Provision will be made to supply necessary drugs and biologicals in a prompt and timely manner.

(b) A current pharmacy reference manual shall be available to all staff.

(3) Storage.

(a) All medications, solutions, and prescription items shall be kept secure and separate from non-medicine items in a conveniently located storage area.

(b) An accessible emergency drug supply shall be maintained in the facility if the facility does not have a pharmacy.

(i) The emergency drug supply shall be approved by the medical director and the facility pharmacist.

(ii) Contents of the emergency drug supply shall be listed on the outside of the container. An inventory of the contents shall be documented by nursing staff after each use and at least weekly.

(iii) Used items shall be replaced within 48 hours.

(c) Medications stored at room temperature shall be maintained within 59 - 80 degrees F. (15 to 30 degrees C.). Refrigerated medications shall be maintained within 36 - 46 degrees F. (2 to 8 degrees C.).

(d) Medications and other items that require refrigeration shall be stored securely and separately from food items.

(4) Controlled Drugs.

(a) Drugs shall be accessible only to licensed nursing, pharmacy, and medical personnel as designated by facility policy. Schedule II drugs shall be kept under double-lock and separate from other medication.

(b) Separate records of drug use shall be maintained on each Schedule II drug.

(i) Records shall be accurate and complete including patient name; drug name; strength; administration documentation; and name, title, and signature of person administering the drug.

(ii) The record shall be reconciled at least daily and retained for at least one year.

(iii) If medications are supplied as part of a unit-dose medication system, separate records are not required.

(c) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition of the drugs can be readily traced.

(5) Disposal of Drugs.

(a) All discontinued and outdated drugs, including those listed in Schedules II, III or IV of the "Federal Comprehensive Drug Abuse Prevention and Control Act of 1970," shall be destroyed promptly by the facility. The destruction shall be witnessed and documented by two licensed members of the facility staff, preferably a physician and a registered nurse designated by the facility.

(b) The name of the patient, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in a separate log kept for this purpose. The log shall be retained for at least three years.

(6) Administration.

(a) A single dose or pre-packaged medications may be sent with the patient upon discharge, when ordered by the discharging physician.

(b) Use of multiple dose medications shall be released in compliance with Utah pharmacy law.

(c) All medications used shall be documented in the patient's medical record.

R432-500-20. Anesthesiology Services.

(1) There shall be facilities and equipment for the administration of anesthesia services commensurate with the clinical and surgical procedures planned for the facility.

(2) The medical staff shall appoint a medical director of anesthesia services who shall meet the following requirements:

(a) be licensed to practice medicine in Utah;

(b) have training and expertise in anesthesia services offered to ensure adequate supervision of patient care.

(3) The medical director of anesthesia services shall implement, coordinate, and ensure the quality of anesthesia services provided in the facility including the implementation of written policies and protocols approved by the medical staff which clearly define the responsibilities and privileges of qualified anesthetists.

(4) Only qualified anesthetists shall provide anesthesia care.

(5) During the surgical procedure, a qualified anesthetist shall be responsible for the following:

(a) monitor, by continuous presence in the operating room (except for short periods of time for personal safety, such as radiation exposure), a patient who is undergoing a surgical procedure and who is receiving general anesthetics, regional anesthetics, or monitored anesthesia care;

(b) continually evaluate a patient's oxygenation, ventilation, and circulation, and have means available to measure temperature during administration of all anesthetics.

(6) The non-physician qualified anesthetists shall provide patient specific anesthesia services upon the request of a licensed professional, as defined in R432-500-2(e). The licensed professional shall be involved in each patient's preoperative assessment and shall ensure that the non-physician anesthetist is providing anesthesia services in a manner that specifically addresses the needs of each individual patient.

(7) The patient and operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(8) When the operating team consists entirely of non-physicians, a physician shall be immediately available in the facility to respond to medical emergencies.

(9) Policies and Procedures.

(a) Written anesthesia service policies shall include the following:

(i) Anesthesia care policies and procedures for preanesthesia evaluation, intraoperative care including documenting a time-based record of events, and postanesthesia care;

(ii) A qualified anesthetist, shall conduct a preanesthesia evaluation, and document the evaluation in the patient's medical record prior to inducing anesthesia;

(iii) The preanesthesia evaluation shall include the following information:

(A) planned anesthesia choice;

(B) assessment of anesthesia risk;

(C) anticipated surgical procedure;

(D) current medications and previous untoward drug experiences;

(E) prior anesthetic experiences;

(F) any unusual potential anesthetic problems.

(b) A qualified anesthetist shall remain with the patient until the patient's status is stable. The qualified anesthetist or the anesthetist's qualified designee shall remain with the patient until the patient's protective reflexes have returned to normal, and it is determined safe as defined in facility policy.

(c) The medical director of anesthesia services shall define the mechanism for the release of patients from postanesthesia care. Each patient who is admitted to an ambulatory surgical facility, and who receives other than unsupplemented local anesthesia, shall be discharged in the company of a responsible adult.

(10) Medicaid certified facilities shall comply with the 42 CFR 415.110 and 42 CFR 416.42 (December 30, 1999) which is incorporated by reference.

(11) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(12) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with the facility policy.

R432-500-21. Laboratory and Radiology Services.

(1) General Requirements.

(a) The facility shall make provisions, as appropriate, for laboratory, radiology and associated services according to facility policy.

(b) Services shall be provided with an order from a physician or a person licensed to prescribe such services. The order for laboratory and radiology services and the test results shall be included in the patient's medical record.

(c) If services are provided by contract, a CLIA certified, State- approved laboratory shall perform such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

(2) Facility Laboratory Services.

If the facility provides CLIA certified or state approved laboratory service, these services shall comply with R432-100-22.

(3) Facility Radiology Services.

If the facility provides its own radiology services, these services shall comply with R432-100-21.

R432-500-22. Medical Records.

(1) Direction.

Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval for staff use. There shall be written policies and procedures to accomplish these purposes.

(2) Medical Record Organization.

(a) A permanent individual medical record shall be maintained for each patient admitted.

(b) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Stamps are not acceptable unless a co-signature is present. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service

provided to the patient. Automated Record Systems may be utilized provided the medical record content maintained meets the requirements as defined within these rules.

(d) All records of discharged patients shall be completed and filed within a time frame established by facility policy. The physician has the responsibility to complete the medical record.

(3) Medical Record Content.

Each patient's medical record shall include the following:

(a) An admission record (face sheet) that includes the name, address, and telephone number of the patient, physician and responsible person and the patient's age and date of admission;

(b) A current physical examination and history, including allergies and abnormal drug reactions;

(c) Informed consent signed by the patient or, if applicable, the patient's representative;

(d) Complete findings and techniques of the operation;

(e) Signed and dated physician orders for drugs and treatments;

(f) Signed and dated nurse's notes regarding care of the patient. Nursing notes shall include vital signs, medications, treatments and other pertinent information;

(g) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient's final disposition, to include instructions given to the patient and responsible person;

(h) The pathologist's report of human tissue removed during the surgical procedure, if any;

(i) Reports of laboratory and x-ray procedures performed, consultations and any other pre-operative diagnostic studies;

(j) Pre-anesthesia evaluation.

(4) Retention and Storage.

(a) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional three years.

(b) All patient records shall be retained by the new owners upon change of ownership.

(c) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(5) Release of Information.

(a) Medical record information shall be confidential.

(i) There shall be written procedures for the use and removal of medical records and the release of patient information.

(ii) Information may be disclosed only to authorized persons in accordance with federal and state laws, and facility policy.

(iii) Requests for information identifying the patient (including photographs) shall require written consent by the patient.

(b) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

R432-500-23. Housekeeping Services.

(1) Organization.

There shall be housekeeping services to maintain a clean, sanitary, and healthful environment. If the facility contracts for housekeeping services with an outside agency, there shall be a signed, dated agreement that details all services provided. The housekeeping service shall meet all the requirements of this section.

(2) Policies and Procedures.

Written housekeeping policies and procedures shall be developed and implemented by the facility, and reviewed and updated annually.

(3) Personnel.

A sufficient number of housekeeping staff shall be employed to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Equipment and Supplies.

(a) Housekeeping equipment shall be suitable for institutional use and properly maintained.

(b) Cleaning solutions for floors shall be prepared according to manufacturer's instructions and be checked periodically to insure proper germicidal concentrations are maintained.

(c) There shall be sufficient numbers of noncombustible trash containers. Lids shall be provided where appropriate.

(d) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used for storage.

(e) Throw or scatter rugs shall not be used in the main traffic areas of the facility or in exitways.

R432-500-24. Laundry Services.

(1) Direction.

(a) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(i) Processing may be done within the facility, in a separate building (on or off site), or in a commercial or shared laundry.

(ii) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.

(iii) The laundry service shall meet all requirements of this section.

(b) If the facility processes laundry on the premises, a qualified person shall be employed to direct the facility's laundry service. The person shall have experience or training in the following:

(i) Proper use of the chemicals in the laundry;

(ii) Proper laundry procedures;

(iii) Proper use of laundry equipment;

(iv) Appropriate facility policy and procedures;

(v) Appropriate federal regulations, state rules, and local laws.

(2) Physical Plant.

(a) If laundry is processed by a commercial laundry which is not part of the facility, the facility must provide at least the following:

(i) A separate room, vented to the outside, for holding and sorting soiled linen until ready for transport;

(ii) A central, clean linen storage area in addition to the linen storage provided in each unit. The central storage capacity shall be sufficient for the facility's operation;

(iii) A separate storage area to maintain clean and soiled linen carts out of traffic areas;

(iv) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(b) If laundry is processed by the facility (within or in a separate building), provision shall be made for the following:

(i) Receiving, holding and sorting room for control and distribution of soiled linen. Soiled linen chutes may empty into this room;

(ii) A laundry room with washing machines adequate for the quantity and type of laundry to be processed;

(iii) A laundry room with dryers adequate for the quantity and type of laundry to be processed;

(iv) A clean storage room with space and shelving adequate to store one half of all laundry being processed;

(v) Convenient access to employee lockers and lounge;

(vi) Storage for laundry supplies;

(vii) Storage area to park clean and soiled linen carts out of traffic;

(viii) Traffic pattern through laundry area shall be:

(A) From building corridor to receiving and sorting/soiled linen room;

(B) From sorting soiled linen room to wash room;

(C) From wash room to dry room. The dry room shall be separated from the wash room by a wall with a door;

(D) From dry room to clean storage or building corridor (covered and protected);

(E) Air flow shall be positive in direction; from clean to soiled, to exterior.

(3) Policies and Procedures.

Each facility shall develop and implement policies and procedures relevant to operation of the laundry. These policies and procedures shall be reviewed and updated annually, and shall address the following:

(a) Methods to handle, store, transport and process clean, soiled, contaminated, and wet linens;

(b) Water temperature to wash laundry that is at least 150 degrees F (66 degrees C) unless the laundry equipment manufacturer recommends other temperatures. An automatic chemical sterilizing system may be used in lieu of 150 degrees F water with Department approval;

(c) Collection and transportation of soiled linen to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation;

(d) The training of laundry personnel in proper procedures for laundry infection control;

(e) Provision for adequate laundry equipment (washers, dryers, linen carts, transport carts) to maintain clean laundry for the facility;

(f) Maintenance of laundry equipment in proper working condition;

(g) Provision for a lavatory with hot and cold running water, soap and sanitary towels within the laundry area.

(4) Clean Linen.

(a) Clean linen shall be stored, handled, and transported in a manner to prevent contamination. Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

(b) Clean linen must be covered if stored in alcoves or transported through the facility. Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(c) Linens shall be maintained in good repair. A supply of clean linen and other supplies shall be provided and available to staff to meet the needs of patients.

(5) Soiled Linen.

(a) Soiled linen shall be handled, stored and processed to prevent the spread of infections. Soiled linen shall be sorted by methods to protect from contamination, and as specified in facility policy.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors and areas occupied by patients, and precludes cross contamination of clean linens. Laundry chutes shall be maintained in a clean sanitary condition.

R432-500-25. Maintenance, Physical Environment, and Safety.

Surgical centers shall provide a safe and sanitary environment. All ambulatory surgical facilities shall comply with this Section.

(1) Direction.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance, or if the facility contracts for maintenance services, there shall be a signed, dated agreement that specifies agreement to comply with all requirements of this section.

(b) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure continued equipment function and sanitary practices throughout the facility.

(2) Policies and Procedures.

(a) Each facility shall develop and implement maintenance, safety, and sanitation policies and procedures that shall be reviewed and updated annually.

(b) When maintenance is performed by an equipment-service company, the company shall certify that work performed, is in accordance with acceptable standards. This certification shall be retained by the facility for review.

(c) A pest control program shall be developed to ensure the facility is free from vermin and rodents which shall be conducted in the facility buildings and grounds by a licensed pest control contractor or an employee trained in pest control procedures. All openings to the outside of the facility shall prevent the entrance of insects and vermin.

(d) Architectural and engineering drawing, specification books, and maintenance literature concerning the design and construction of built-in systems should be available for use by maintenance and safety personnel.

(e) Instructional information, cautions, specifications, and operational data on all facility equipment shall be available for reference by all concerned departments.

(f) Systems-disconnects location information shall be readily available.

(g) Documentation shall be maintained for Department review of the pest control program and other maintenance activity.

R432-500-26. General Maintenance.

(1) Equipment used in the facility shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(2) Draperies, carpets, and furniture shall be maintained clean and in good repair.

(3) Electrical systems including appliances, cords, equipment, call systems, switches, and grounding systems shall be maintained to assure safe functioning.

(4) Heating and cooling systems shall be inspected and documented annually to assure safe operation. Written records of maintenance on high intensity (90%) filters and humidifiers shall be kept.

(a) Heating equipment shall be capable to maintain 80 degrees F.

(b) Cooling equipment shall be capable to maintain 74 degrees F.

(5) Electric circuits shall be tested annually to show that phase, voltage, amperage, grounding and load balancing are as required.

(6) Grounding systems in operating rooms shall be tested monthly and documented.

(7) Medical gas systems shall be inspected quarterly.

(8) Steam systems driving autoclaves and other sterilization equipment shall be tested regularly to assure proper operating temperatures, volumes, and pressures. Gauges shall be tested annually.

(9) All switch-over devices, relays, breakers, outlets, and receptacles in the emergency system shall be tested quarterly.

(10) Air supplies, main burners and stack afterburners shall be inspected annually.

(11) All new equipment shall be tested prior to use.

(12) All patient care equipment shall be tested as specified in facility policy but at least according to manufacturer's specifications.

(13) All other electric and electronic equipment shall be tested at least annually.

(14) All testing and inspections of systems and equipment shall be done by qualified persons.

(15) Records shall be maintained of all inspections and

testing.

(16) Maintenance work performed shall be documented. All required records including maintenance, safety inspections, and drill schedules shall be retained for two years or from the date of the last major inspection.

(17) All buildings, fixtures, equipment, spaces, and sanitation systems shall be maintained in operable condition.

(18) Any chemical of a poisonous nature shall be properly labeled and shall not be stored with patient care items.

R432-500-27. Air Filters.

All air filters installed in heating, air conditioning, and ventilation systems, shall be inspected and filters replaced as needed to maintain the systems in operating condition.

R432-500-28. Emergency Electric Service.

(1) The facility shall make provision for an emergency generator to provide power to critical areas essential for patient safety in the event of an interruption in normal electrical power service.

(2) There shall be provision for emergency exit lighting in accordance with NFPA 101.

(3) Flash lights shall be available for emergency use by staff.

(4) Testing Emergency Power Systems.

(a) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(i) The emergency power generator shall be tested weekly and run under load for a period of 30 minutes monthly.

(ii) Transfer switches and battery operated equipment shall be tested at approximately 14-day intervals.

(b) A written record of inspection, performance, test period, and repair of the emergency generator shall be maintained on the premises for review.

R432-500-29. Storage and Disposal of Garbage, Refuse, and Waste.

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.

R432-500-30. Provisions for Gas Usage.

(1) Flammable anesthetic agents or chemicals may not be used unless the building is properly constructed for its use in accordance with NFPA guidelines.

(a) Compressed gases and flammable liquids shall be stored safely. All compressed gas cylinders in storage shall be capped and secured. Oxidizing agents may not be stored with flammables.

(b) Oxygen and flammable agents shall be stored away from combustibles. Liquid flammable agents shall be stored in metal cabinets with no more than ten gallons of any one flammable liquid or 60 gallons total of flammable liquids stored per cabinet. Warning signs shall be posted when compressed gases or flammable liquids are used.

(2) Equipment shall be available to extinguish liquid oxygen and enriched gases. Employees shall be trained in the proper use of equipment and containment of combustions.

(3) When using oxygen, provision shall be made for at least the following:

(a) Safe handling and storage;

(b) Facility personnel shall not transfer gas from one cylinder to another;

(c) Piped oxygen system shall be tested in accordance with The NFPA 56F and 56K and a written report shall be filed as follows:

(i) Upon completion of initial installation;

(ii) Whenever changes are made to the system;

(iii) Whenever the integrity of the system has been breached;

(iv) There shall be a scavenging system for evacuation of anesthetic waste gas.

R432-500-31. Lighting.

(1) Sodium and mercury vapor lights shall not be used inside the facility, but may be used as a source of exterior lighting.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least of 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot candles of light at working surfaces:

(a) Operating rooms : 50 Foot-candles

(b) Medication preparation areas : 50 foot-candles

(c) Charting areas : 50 foot-candles

(d) Reading areas : 50 foot-candles

(e) Laundry areas : 30 foot-candles

(f) Toilet, bath, and shower rooms : 30 foot-candles

(g) Nutritional area : 30 foot-candles.

R432-500-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons. The facility shall maintain hot water delivered to patient care areas at temperatures between 105 and 115 degrees F. Temperatures shall be regularly tested and a record maintained as part of the preventive maintenance program.

(4) There shall be grab bars at each bathroom facility used by patients.

(5) Water sterilizers, exchangers, distilleries, deionizers and filters shall be functional and shall provide the quality of water intended in each application.

R432-500-33. Sanitation Facilities.

(1) Handwashing and toilet facilities shall be adequate in number and convenient for use by employees and patrons. Facilities shall be kept clean, in good repair and adequately ventilated.

(2) An adequate supply of hand cleansing soap and a supply of sanitary towels or approved hand drying appliance shall be available for use. Common towels are prohibited.

(3) Adequate and conveniently located toilet facilities shall be provided for employees and patrons. Toilet facilities shall be kept clean, in good repair, and free of objectionable odors. They shall be adequately ventilated.

(4) All toilet and bathroom doors used by patients and opening inward into the bath or toilet room shall also allow the door to be removed from the outside of the bath or toilet room.

(5) Other Safety and Sanitation Provisions.

(a) Trash chutes, laundry chutes, and dumb waiters shall be safe and sanitary. Trash and laundry chutes, elevators, dumb waiters, message tubes, and other such systems shall not pump contaminated air into clean areas.

(b) The use of exposed element portable heaters is prohibited.

(c) If virulent agents are tested in the facility, a shielded exhaust hood or other equivalent protective device(s) shall be provided.

(d) Building, grounds, walkways, and parking shall be free of hazards and in good repair. Parking and walkways shall be clear of snow and ice. A clear unobstructed path shall be maintained from all emergency exits to a public way.

(e) Floors shall be maintained so they are in good repair. Floors in labs, toilet rooms, baths, kitchens, and isolation rooms shall be of ceramic tile, roll-type vinyls, or seamless bonded flooring which is resilient, non-absorbent, impervious, and easily cleaned.

(f) Traffic in all patient care areas shall be monitored. Only authorized individuals shall have access to sterile areas.

R432-500-34. 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.

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R432. Health, Family Health and Preparedness, Licensing.
R432-600. Abortion Clinic Rule.
R432-600-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-600-2. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) An "abortion clinic" means a facility, including a physician's office but not including a general acute or a specialty hospital that performs abortions.

R432-600-3. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

R432-600-4. Licensure.

(1) A license is required to operate an abortion clinic. The licensee and facility shall maintain documentation that they are members in good standing with the National Abortion Federation or the Abortion Care Network which is required for licensure.

(2) An abortion clinic may be licensed as a Type I facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions, as defined in section 76-7-301, after the first trimester of pregnancy.

(3) An abortion clinic may be licensed as a Type II facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or

(b) performs abortions, as defined in section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

(4) Abortion clinics must comply with requirements of Title 76, Chapter 7, Part 3 Abortion.

R432-600-5. Construction.

(1) Each facility shall conform with the requirements of R432-4-1 through R432-4-22, with the exception of R432-4-8(1)(b).

(2) Each facility shall conform to the functional, space, and equipment requirements of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, sections 3.1 and 3.2 with the following exceptions.

(a) Section 3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance is deleted;

(b) Section 3.1-7.1.1.1 NFPA 101 is deleted;

(c) Section3.1-7.2.2.1 Corridor Width is deleted;

(d) Section 3.1-7.2.2.3(1)(b) is deleted;

(e) Section 3.1-8.2.6 Heating Systems and Equipment is deleted;

(f) 3.2-6.2.4 Multipurpose Rooms is deleted; and

(g) Further modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

R432-600-6. Organization.

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the semi-annual inspection report by the Department;

(h) Compile statistics on the distribution of the informed consent material as required in Section 76-7-313.

R432-600-7. Clinic Protocols, Policies, and Procedures.

Clear, explicit written protocols, criteria, policies and procedures in accordance with Section 76-7-302, shall be established by the licensee with consultation of the medical director and the administrator in the following areas:

(1) Patient eligibility criteria;

(2) Physician competency criteria;

(3) Informed consent;

(4) Abortion procedure protocols to include;

(a) For Type II Clinics, policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic.

(b) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgment of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(5) Pre and post counseling;

(6) Clinic operational functions;

(7) Patient care and patient rights policies;

(8) A quality assurance committee;

(9) Ongoing relevant training program for all clinic personnel;

(10) Emergency and disaster plans;

(11) Fire evacuation plans.

R432-600-8. Administrator.

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his or her absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department of Health, Bureau of Health Facility Licensing within 7 days in the event of the death of a patient;

(f) Notify appropriate authorities when a reportable communicable disease is diagnosed;

(g) Administrator will ensure that a fetal death certificate is filed as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and document what action was taken.

R432-600-9. Medical Director.

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable supervision of the scope of service offered by the clinic;

(c) Be a diplomat of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify her or him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him or her for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation or the Abortion Care Network.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

R432-600-10. Health Surveillance.

(1) 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 clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702. Communicable Disease Rules;

(5) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for control of Tuberculosis;

(a) The licensee shall ensure that all employees are skin tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-600-11. Personnel.

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

R432-600-12. Contracts.

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

R432-600-13. Emergency Transfer Agreements.

(1) The licensee shall maintain either admitting privileges for the medical director or a written transfer agreement with one or more full-service JCAHO-accredited hospitals located within an overall travel time of 15 minutes or less from the clinic.

(2) The transfer agreement shall include provisions for:

(a) Hospital admitting privileges for the clinic medical director or the attending physician;

(b) Transfer of information needed for proper care and treatment of individual transferred;

(c) Security and accountability of the personal effects of the individual transferred.

R432-600-14. Quality Assurance.

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the

clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

R432-600-15. Emergency and Disaster.

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff shall be available;

(g) Documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(b) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and documentation shall be in accordance with R710-4, State of Utah Fire Protection Board. The actual evacuation of patients during a drill is optional.

R432-600-16. Patients' Rights.

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured 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;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-600-17. General Patient Care Policies.

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the administrator or designee.

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

R432-600-18. Nursing Services.

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Each Type II clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(a) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(b) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

(4) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(6) Disposable and single-use items shall be properly disposed after use.

R432-600-19. Pharmacy Service.

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other

pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area and separate from non-medicine items.

(5) An accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

R432-600-20. Laboratory and Radiology Services.

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-22 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-21.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

R432-600-21. Anesthesia Services.

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-15 and Utah Code 76-7-305.

R432-600-22. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

R432-600-23. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

(3) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Housekeeping equipment shall be for institutional use and properly maintained.

(5) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

(6) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

(7) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be stored in a locked area to prevent unauthorized access. Toilet rooms shall not be used as storage places.

R432-600-24. Laundry Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry.

(4) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(b) Clean linen shall be covered if stored in alcoves and transported through the facility.

(c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(d) Linens shall be maintained in good condition.

(e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of

patients.

(5) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(a) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(6) Laundry chutes shall be maintained in a clean sanitary state.

R432-600-25. Maintenance Services.

(1) There shall be adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times, in accordance with manufacturer specifications for the safety and well-being of patients, staff, and visitors.

(2) The administrator shall employ or contract with a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents.

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(8) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

R432-600-26. Emergency Electric Service.

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested in accordance with NFPA 99.

(b) Transfer switches and battery operated equipment shall be functionally tested every 30 days and load tested at least annually, for 90 minutes.

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

R432-600-27. Storage and Disposal of Solid Wastes.

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.

R432-600-28. Oxygen.

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the NFPA 101, Life Safety Code and referenced NFPA standards.

(2) Piped oxygen systems shall be tested and installed in accordance with NFPA 99.

(3) A written report shall be filed with the Utah Department of Health as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system; and

(c) Whenever the integrity of the system has been breached.

R432-600-29. Lighting.

(1) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

R432-600-30. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall maintain hot water delivered to patient care areas at temperature between 105 degrees and 120 degrees F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

R432-600-31. Smoking Policy.

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 20.7.4 of the Life Safety Code.

R432-600-32. 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 care facilities

December 23, 2011	**26-21-5**
Notice of Continuation December 13, 2010	**26-21-6**
	26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner;

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a

clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual providing home health services;

(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be maintained in an organized format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) A written plan of care;

(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) Reasons for referral to home health agency;

(e) Statement of the suitability of the patient's place of residence for the provision of health care services;

(f) Documentation of telephone consultation or case conferences with other individuals providing services;

(j) Signed and dated clinical notes for each patient contact or home visit including services provided

(h) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;
(iii) General physical condition;
(iv) General emotional condition;
(v) Positive or negative physical and emotional responses to treatments and services;
(vi) General behavior; and
(vii) General appearance.
(f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.
(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.
(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.
(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.
(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.
(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.
(3) The agency shall demonstrate concern for cost of care by evaluation of the following:
(a) Relevance of health care services;
(b) Appropriateness of treatment frequency;
(c) Use of less expensive, but still effective, resources whenever possible;
(d) Use of ancillary services consistent with patient needs.
(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.
(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.
(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.
(5) The methodology for evaluation shall include but is not limited to:
(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;
(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;
(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.
(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
(4) Nursing staff shall observe, report, and record written clinical notes.
(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.
(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.
(7) Licensed nurses shall have the following responsibilities:
(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;
(c) Inform the physician and other personnel of changes in the patient's condition and needs;
(d) Write clinical notes in the individual patient record for each visit or contact;
(e) Teach self-care techniques to the patient or family, or both;
(f) Develop plans of care;
(g) Participate in in-service programs.
(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:
(a) Designate a registered nurse to act as director of nursing services during his absence;
(b) Assume responsibility for the quality of nursing services provided by the agency;
(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;
(d) Establish work schedules for nursing personnel according to patient needs;
(e) Assist in development of job descriptions for nursing personnel;
(f) Complete performance evaluations for nursing personnel according to agency policy;
(g) Direct in-service programs for all nursing personnel.
(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:
(a) Make the initial nursing evaluation visit;
(b) Re-evaluate nursing needs based on the patient's status and condition;
(c) Initiate the plan of care and make necessary revisions;
(d) Provide services which require specialized nursing skill;
(e) Initiate appropriate preventive and rehabilitative nursing procedures;
(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree ot supervision needed;
(g) Assist in coordinating all services provided;
(h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;

(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the certified nursing aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every three months to patients who require long-term maintenance services;

(iv) Any time there is a question of change in the patient's condition.

(10) The licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

The certified nursing aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The certified nursing aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patients;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

(14) Certified Nursing Aides shall be at least 18 years old.

(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:

(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;

(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

R432-700-23. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:

(a) Receive written instructions from the supervisor;

(b) Perform only the tasks and duties outlined in the service agreement;

(c) Have knowledge of agency policy and procedures;

(d) Be trained in first aid;

(e) Be oriented and trained in all aspects of care to be provided to clients;

(f) Be able to demonstrate competency in all areas of training for personal care; and

(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;

(2) Personal Care Aides may assist clients with the following activities:

(a) Self-administration of medications by:

(i) reminding the client to take medications, and

(ii) opening containers for the client;

(b) Housekeeping;

(c) Personal grooming and dressing;

(d) Eating and meal preparation;

(e) Oral hygiene and denture care;

(f) Toileting and toilet hygiene;

(g) Arranging for medical and dental care including transportation to and from the appointment;

(h) taking and recording oral temperatures;

(i) Administering emergency first aid;

(j) Providing or arranging for social interaction;

(k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;
(i) Necessary safety measures;
(j) Instructions, if any, to patient and/or family;
(k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW)or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. 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 care facilities
October 1, 2011 26-21-5
Notice of Continuation September 27, 2007 26-21-2.1

R432. Health, Family Health and Preparedness, Licensing.
R432-725. Personal Care Agency Rule.
R432-725-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-725-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of personal care agencies.

R432-725-3. Compliance.

(1) A personal care agency consists of two or more individuals providing personal care services on a visiting basis.

(2) A Personal Care Agency shall not exceed personal care services as defined in R432-725-4(2)(b).

R432-725-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(b) "Personal Care Services" means:

(i) self-administration of medications by:

(A) Reminding the client to take medications, and

(B) Opening containers for the client;

(ii) transferring;

(iii) personal grooming and dressing;

(iv) eating and meal preparation;

(v) oral hygiene and denture care;

(vi) toileting and toilet hygiene;

(vii) bathing;

(viii) taking and recording temperatures and weights;

(ix) administering emergency first aid;

(x) providing transportation.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided.

R432-725-5. Administrator.

(1) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(2) The administrator shall be at least 21 years of age and have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who is at least 21 years of age and who shall act in his absence. The designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being.

(4) The administrator or designee shall be available during the agency's hours of operation.

R432-725-6. Personnel.

(1) The agency shall maintain documentation for each employee required to be licensed or certified.

(2) Copies shall be maintained for Department review that staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(3) The agency shall ensure each employee maintains a minimum of six hours of in-service per calendar year, prorated for the first year of employment.

(4) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-725-7. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct client contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-725-8. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) Job descriptions/duties;

(b) Ethics, confidentiality, and clients' rights;

(c) Reporting requirements for suspected abuse, neglect or exploitation.

R432-725-9. Admission and Retention.

(1) The agency may accept and retain clients for service if the client's needs do not exceed the level of personal care services as determined and documented by a licensed health care professional.

(2) If the client's needs exceed the personal care services, the agency shall make a referral to a licensed health care professional or an appropriate alternative service.

R432-725-10. Service Agreement.

(1) The agency shall obtain a signed and dated service agreement from the client and/or his responsible party. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in base charges.

R432-725-11. Termination of Services Policies.

(1) The agency may discharge a client under any of the following circumstances:

(a) Payment for services cannot be met;

(b) The safety of the client or provider cannot be assured;

(c) The needs of the client exceed the level of care provided by the agency;

(d) The client requests termination of services; or

(e) The agency discontinues services.

R432-725-12. Clients' Rights.

(1) Written clients' rights shall be established and made available to the client, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how clients' rights information is distributed.

(3) The agency shall insure that each client receiving services has the following rights:

(a) To be fully informed of these rights and all rules governing client conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the client or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be free of mental abuse, physical abuse and/or exploitation;

(d) To be afforded the opportunity to participate in the planning of personal care services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To be assured confidential treatment of personal records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(h) To receive proper identification from the individual providing personal care services;

(i) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-725-13. Client Records.

(1) The Personal Care Agency shall maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Client records shall be retained by the agency for three years following the last date of service;

(3) The client record shall contain the following:

(a) Client's name, date of birth and address;

(b) Client service agreement;

(c) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;

(d) Documentation of date and reason for the termination of services.

R432-725-14. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and must:

(a) Have knowledge of agency policy and procedures;

(b) Be trained in first aid;

(c) Be able to demonstrate competency in all areas of training for personal care.

(2) Personal Care Aides shall be supervised by an individual with the following qualifications:

(a) A licensed nurse; or

(b) A Certified Nursing Aide with at least two years experience in personal or home care.

(3) The supervisor shall complete an on-site evaluation of the personal care aide and document the quality of the personal care services provided in the client's place of residence every six months.

(4) Personal Care Aides shall document observations and services in the individual client record.

R432-725-15. 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 care facilities
October 1, 2011 **26-21**

R495. Human Services, Administration.
R495-878. Americans with Disabilities Act Grievance Procedures.
R495-878-1. Authority and Purpose.

(1) This rule is made under authority of Section 63A-1-111 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Human Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

R495-878-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities.

(2) "Department" means the Department of Human Services created by Section 62A-1-102.

(3) "Designee" means an individual appointed by the executive director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(5) "Disability" is defined in 28 CFR 35.104.

(6) "Executive Director" means the executive director of the department.

(7) "Major life activities" is defined in 28 CFR 35.104.

(8) "Qualified Individual" is defined in 28 CFR 35.104.

R495-878-3. Filing of Complaints.

(1) Any qualified individual or their authorized representative may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals or their authorized representatives shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals or their authorized representatives shall file their complaints within 180 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 180 days after alleged noncompliance.

(4) Each complaint shall:

(a) Be in writing and delivered to:

ADA Coordinator
Department of Human Services
195 North 1950 West
Salt Lake City, Utah 84116

(b) Include the complainant's name and address;

(c) Include the nature and extent of the qualified individual's disability;

(d) Describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(e) Describe the action and accommodation desired; and

(f) Be signed by the complainant or by his legal representative.

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

R495-878-4. Investigation of Complaints.

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R495-878-3(4) of this rule if it is not made available by the complainant.

(a) If the ADA Coordinator requires additional information from the complainant to complete the investigation, the ADA Coordinator shall send the complainant a records release form. This form shall be returned within 10 days of notice.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

R495-878-5. Recommendation and Decision.

(1) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(2) Within 30 calendar days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director or designee shall render a decision within 10 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, and shall be delivered to the complainant.

R495-878-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(2) The appeal shall be in writing.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision.

R495-878-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
December 27, 2011 62A-1-111
Notice of Continuation February 5, 2007 63G-3-201(3)
28 CFR 35.107

R512. Human Services, Child and Family Services.
R512-205. Child Protective Services, Investigation of Domestic Violence Related Child Abuse.
R512-205-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for investigation of an allegation of Domestic Violence Related Child Abuse and the basis upon which a supported finding will be made.

(2) This rule is authorized by Section 62A-4a-102.

R512-205-2. Definitions.

(1) "Cohabitant" has the same meaning as in Section 78B-7-102.

(2) "Dangerous weapon" has the same meaning as in Section 76-1-601.

(3) "Child and Family Services" means the Department of Human Services, Division of Child and Family Services.

(4) "Domestic violence" has the same meaning as in Section 77-36-1.

(5) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct.

(6) "In the presence of a child" has the same meaning as in Section 76-5-109.1.

(7) "Serious bodily injury" has the same meaning as in Section 76-1-601.

(8) "Substantial bodily injury" has the same meaning as in Section 76-1-601.

R512-205-3. Administrative Findings.

(1) The commission of acts of domestic violence in the presence of a child is child abuse, because it results in non-accidental harm or threatened harm to the child. Such abuse is subject to the reporting statute (Section 62A-4a-403).

(2) Research establishes that exposure to domestic violence causes emotional or developmental harm or threatened harm to children, which may later be manifested in behavioral problems, increased risk of drug or alcohol abuse, increased risk of becoming perpetrators or victims of abuse, or in emotional disorders such as post-traumatic stress disorder.

(3) Exposure to domestic violence may also threaten a child with physical harm.

(4) Awaiting the manifestation of emotional or developmental harm does not protect children from such harm, and early intervention is required to mitigate and prevent further harm.

(5) Accordingly, establishing the commission of an act of domestic violence in the presence of a child shall be sufficient to establish Domestic Violence Related Child Abuse, without any further evidence of harm.

(6) The primary responsibility to investigate allegations of Domestic Violence Related Child Abuse as defined in Section 76-5-109.1 lies with law enforcement, and Child and Family Services has no responsibility to investigate domestic violence in the presence of a child as described in that section, except as provided in this rule (see Section 62A-4a-105(6)).

R512-205-4. Investigation.

(1) An allegation of Domestic Violence Related Child Abuse, that meets all other requirements for acceptance, shall be accepted by Child and Family Services for investigation if it is alleged that a child was physically present or saw or heard an incident of domestic violence and:

(a) The alleged perpetrator used or threatened to use a dangerous weapon; or

(b) The alleged perpetrator threatened to cause substantial or serious bodily injury; or

(c) The alleged perpetrator committed a sexual assault, strangulation, or other assault likely to result in substantial or serious bodily injury; or

(d) The alleged victim sustained substantial or serious bodily injury; or

(e) There is a pattern of two or more CPS investigations of Domestic Violence Related Child Abuse within the previous two years; or

(f) Another allegation of abuse, neglect, or dependency is being accepted or is in the process of being investigated.

(2) If during an open, non-CPS case, a referral is received for Domestic Violence Related Child Abuse which does not meet the criteria for acceptance under subparagraph (1) above, the information will be sent to the ongoing caseworker for assessment.

R512-205-5. Investigation Findings.

(1) Upon completion of an investigation of Domestic Violence Related Child Abuse, a supported finding may be based upon the definitions of this rule.

KEY: child abuse, domestic violence
November 1, 2011 **62A-4a-102**
62A-4a-105
76-5-109.1

R539. Human Services, Services for People with Disabilities.
R539-9. State Supported Employment Program.
R539-9-1. Purpose and Authority.

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

(a) procedures and standards for the determination of eligibility for the Division's state supported employment program for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

(2) "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

(3) "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(4) "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

(5) "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and Plan for Achieving Self Support or Impairment Related Work Expense.

R539-9-3. Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the state supported employment program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot, (but may use Service Brokering services, if appropriate),

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the program,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the State Supported Employment Program Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed, signed by a rehabilitation counselor and a Division representative,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of state supported employment program, and

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through 26 U.S. Code 44, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD.

R539-9-4. Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment program
December 27, 2011 62A-5-103.1
Notice of Continuation August 10, 2011

R590. Insurance, Administration.
R590-102. Insurance Department Fee Payment Rule.
R590-102-1. Authority.

This rule is adopted pursuant to Subsections 31A-3-103(4) and (5) which require the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purposes of this rule are to:
(a) publish the schedule of fees approved by the legislature;
(b) establish fee deadlines; and
(c) disclose this information to licensees and the public.
(2) The rule applies to:
(a) all persons engaged in the business of insurance in Utah;
(b) all licensees;
(c) applicants for licenses, registrations, certificates, or other similar filings; and
(d) all persons requesting services provided by the department for which a fee is required.

R590-102-3. Definitions.

In addition to the definitions in Title 31A, the following definitions shall apply for the purposes of this rule:
(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.
(2) "Agency" means:
(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and
(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.
(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, sponsored captive, and special purpose financial captive.
(4) "Deadline" means the final date or time:
(a) imposed by:
(i) statute;
(ii) rule; or
(iii) order, and
(b) by which
(i) a payment must be received by the department without incurring penalties for late payment or non-payment; or
(ii) required information must be received by the department without incurring penalties for late receipt or non-receipt.
(5) "Fee" means an amount set by the commissioner, by statute, or by rule and approved by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.
(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.
(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.
(8) "Limited-line agency" includes bail bond and limited-line producer.
(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.
(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, surplus line insurer, accredited reinsurer, trusteed reinsurer, employee welfare fund and health discount program.
(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.
(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.
(13) "Received by the department" means:
(a) the date delivered to and stamped received by the department, if delivered in person;
(b) the postmark date, if delivered by mail;
(c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or
(d) the received date recorded on an item delivered, if delivered by:
(i) facsimile;
(ii) email; or
(iii) another electronic method; or
(e) a date specified in:
(i) a statute;
(ii) a rule; or
(iii) an order.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 18, shall be due when service is requested, if applicable, otherwise by the due date on the invoice.
(2) Payment.
(a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.
(b) Check.
(i) Checks shall be made payable to the Utah Insurance Department.
(ii) A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided.
(iii) Late fees and other penalties, resulting from the voided action will apply until proper payment is made.
(iv) A check payment that is dishonored is a violation of this rule.
(c) Cash. The department is not responsible for un-receipted cash that is lost or misdelivered.
(d) Electronic.
(i) Credit Card.
(A) Credit cards may be used to pay any fee due to the department.
(B) Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.
(C) Late fees and other penalties, resulting from the voided action, will apply until proper payment is made.
(D) A credit card payment that is dishonored is a violation of this rule.
(ii) Automated clearinghouse (ACH).
(A) Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information.
(B) Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided.
(C) Late fees and other penalties resulting from the voided

action will apply until proper payment is made.

(D) An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See R590-102-15.

R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.

(1) Annual license fees:

(a) certificate of authority, initial license application - due with license application: $1,000;

(b) certificate of authority - renewal - due by the due date on the invoice: $300;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: $350;

(d) certificate of authority - reinstatement - due with application for reinstatement: $1,000.

(2) Other license fees:

(a) certificate of authority - amendments - due with request for amendment: $250;

(b)(i) Form A - application for merger, acquisition, or change of control, due with filing: $2,000.

(ii) Expenses incurred for consultant(s) services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing - due with filing: $2,000; and

(d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: $1,000.

(3) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(4) Annual service fee:

(a) Due annually by the due date on the invoice.

(b) A prescription drug plan is exempted from payment of a service fee.

(c) The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(d) Fee schedule:

(i) $0 premium volume: no service fee;

(ii) more than $zero but less than $1 million in premium volume: $700;

(iii) $1 million but less than $3 million in premium volume: $1,100;

(iv) $3 million but less than $6 million in premium volume: $1,550;

(v) $6 million but less than $11 million in premium volume: $2,100;

(vi) $11 million but less than $15 million in premium volume: $2,750;

(vii) $15 million but less than $20 million in premium volume: $3,500; and

(viii) $20 million or more in premium volume: $4,350.

(e) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(f) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

(5) Other fees:

(a) E-commerce fee: (see R590-102-17).

(b) Insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-6. Other Organization, Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Fees.

(1) Annual license fee:

(a) other organization:

(i) initial - due with application: $250;

(ii) renewal - due annually by the due date on the invoice: $200;

(iii) late renewal - due for any renewal paid after the date on the invoice: $250;

(iv) reinstatement - due with application for reinstatement: $250;

(v) The annual other organizations initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(b) surplus line insurer, accredited reinsurer, trusteed reinsurer, and employee welfare fund:

(i) initial - due with application $1,000.

(ii) renewal - due annually by the due date on the invoice: $300;

(iii) late renewal - due for any renewal paid after the date on the invoice: $300;

(iv) reinstatement - due with application for reinstatement: $1,000;

(v) The annual initial or renewal surplus line license fee includes the surplus lines annual statement filing for:

(A) U.S. companies - due annually on May 1; and

(B) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(vi) The annual initial or renewal accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(2) Annual service fee:

(a) Other organization - due annually by the due date on the invoice: $200.

(b) Surplus lines insurer, accredited reinsurer, trusteed reinsurer, and employee welfare fund - due annually by the due date on the invoice: $200

(c) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent; and

(iii) rate, form, report or service contract filing.

(d) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees: E-commerce fee: see R590-102-17.

R590-102-7. Captive Insurer Fees.

(1) Initial license application - due with license application: $200.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: $5,000;

(b) renewal - due by the due date on the invoice: $5,000;

(c) late renewal - due for any renewal paid after the date on the invoice: $5,050;

(d) reinstatement - due with application for reinstatement: $5,050.

(4) Other fees:

(a) e-commerce fee: see R590-102-17.

(b) Examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-8. Life Settlement Provider Fees.

(1) Annual license fees:

(a) initial - due with application: $1,000;

(b) renewal - due by the due date on the invoice: $300;

(c) late renewal - due for any renewal paid after the date on the invoice: $350;

(d) reinstatement - due with reinstatement application: $1,000.

(2) Annual service fee - due by the due date on the invoice: $600.

(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees:

(a) e-commerce fee: see R590-102-17.

(b) Examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-9. Professional Employer Organization (PEO) Fees.

(1) Annual license fees:

(a) PEO - not certified by an assurance organization:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $2,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $2,050;

(iv) reinstatement - due with reinstatement application: $2,050;

(b) PEO - certified by an assurance organization:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;

(iv) reinstatement - due with reinstatement application: $1,050;

(c) PEO - small operator:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;

(iv) reinstatement - due with reinstatement application: $1,050.

(5) E-commerce fee: see R590-102-17.

R590-102-10. Individual Resident and Non-Resident License Fees.

(1) Biennial resident and non-resident full-line individual initial license or renewal fee:

(a) initial license fee - due with application: $70:

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $70;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $120.

(2) Biennial resident and non-resident limited-line individual initial or renewal license fee:

(a) initial license fee - due with application: $45;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $45;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $95.

(3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: $25.

(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) individual continuing education services.

(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(6) Other fees:

(a) e-commerce fee: see R590-102-17.

(b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: $25.

R590-102-11. Agency License Fees, Other than Bail Bond Agencies.

(1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: $75;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $75;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $125;

(d) resident title license:

(i) initial license fee - due with application: $100;

(ii) renewal license fee, if renewed prior to license expiration date - due with renewal application: $100.

(2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: $25.

(3) The biennial initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) filing of producer designation to agency license - initial;
(e) filing of producer designation to agency license - termination;
(f) filing of amendment to agency license; and
(g) filing of power of attorney.
(4) Other fees:
e-commerce fee: see R590-102-17.

R590-102-12. Bail Bond Agency.
(1) Annual bail bond agency per annual license period:
(a) initial license fee - due with application: $250;
(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;
(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.
(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:
(a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) filing of producer designation to agency license - initial;
(e) filing of producer designation to agency license - termination;
(f) filing of amendment to agency license; and
(g) filing of power of attorney.
(3) Other fees: E-commerce fee: see R590-102-17.

R590-102-13. Health Insurance Purchasing Alliance.
(1) Annual license fee:
(a) initial - due with application: $500;
(b) renewal - due by the due date on the invoice: $500;
(c) late renewal - due for any renewal paid after the date of the invoice: $550; and
(d) reinstatement - due with application for reinstatement: $500.
(2) E-commerce fee: see R590-102-17.

R590-102-14. Continuing Education Fees.
(1) Annual continuing education provider license fees per annual license period:
(a) initial license fee - due with application: $250;
(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;
(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.
(2) Continuing education course post-approval fee - due with request for approval: $5 per credit hour, minimum fee $25.

R590-102-15. Non-electronic Processing or Payment Fees.
(1) Non-electronic filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper non-electronic filing or by the due date on the invoice: $5.
(2) Non-electronic application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper non-electronic application or by the due date on the invoice: $25.
(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: $25.

R590-102-16. Dedicated Fees.
The following are fees dedicated to specific uses:
(1) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;
(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;
(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:
(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: $15;
(b) agency title licensee applicant - due with the initial application: $1,000.
(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:
(i) Band A: $0 to $1 million: $125;
(ii) Band B: more than $1 million to $10 million: $250;
(iii) Band C: more than $10 million to $20 million: $375;
(iv) Band D: more than $20 million: $500.
(4) relative value study book fee - due when book purchased or by invoice due date: $10;
(5) mailing fee for books - due if book is to be mailed to purchaser: $3;
(6) fingerprint fee - due with application for individual license:
(a) Bureau of Criminal Investigation (BCI): $15.00; and
(b) Federal Bureau of Investigation (FBI): $19.25; and

R590-102-17. Electronic Commerce Dedicated Fees.
(1) E-commerce and internet technology services fee:
(a) admitted insurer and surplus lines insurer - due with the initial, annual renewal, or reinstatement application: $75;
(b) captive insurer - due with the initial, annual renewal, or reinstatement application: $250;
(c) other organization, professional employer organization, and life settlement provider - due with the initial, annual renewal, or reinstatement application: $50;
(d) continuing education provider - due with the initial, annual renewal, or reinstatement application: $20;
(e) agency - due with the initial, biennial renewal, or reinstatement application: $10;
(f) health insurance purchasing alliance - due with the initial, annual renewal, or reinstatement application: $10; and
(g) individual - due with the initial, biennial renewal, or reinstatement application: $5.
(2) Database access fees:
(a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: $3 per transaction;
(b) rate and form filing database access to an electronic public rate and form filing:
(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);
(ii) each line of insurance accessed is charged the following fees:
(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD - $45;
(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time - $45;
(iii) additional DVD - $2;
(iv) payment due at time of service or by the due date on

the invoice.

R590-102-18. Other Fees.

(1) photocopy fee - per page: $.50.

(2) Complete annual statement copy fee - per statement: $40.

(3) Fee for accepting service of legal process: $10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: $1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - $50, due with request for information;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - $50, due by the due date on the invoice;

(iii) additional CD - $1.00, due by the due date on the invoice.

(5) Returned check fee: $20.

(6) Workers compensation loss cost multiplier schedule: $5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: $35.

R590-102-19. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

KEY: insurance fees
September 28, 2009 31A-3-103
Notice of Continuation December 29, 2011

R590. Insurance, Administration.
R590-103. Security Deposits.
R590-103-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsections 31A-2-201(3) and 31A-2-206(17), which authorizes rules to implement the Utah Insurance Code.

R590-103-2. Purpose and Scope.

The purpose of this rule is to implement provisions relating to required deposits with the commissioner of insurance and adopt forms for that purpose. This rule applies to all insurance company licensees in this state.

R590-103-3. Rules.

A. The rule on the use of clearing corporations and the federal book-entry system shall be applicable when securities are to be used for purposes of deposit with the state.

B. Securities held by a qualified transfer deposit corporation may be qualified deposits if held in accordance with the rule on the use of clearing corporations and through a qualified custodian.

C. If a declining balance security is deposited with the insurance commissioner, the company depositing the security shall report the balance to the commissioner at least on a quarterly basis. The commissioner may order that a company report these balances monthly.

D. The custodian institution holding deposits, or the state treasurer, shall report on an annual basis to the insurance company and the commissioner the amount of securities held on December 31st of each year. This report shall be submitted by January 15th of the following year. Failure to provide the report shall be grounds for appropriate action by the commissioner. The form of this report shall state the description of the securities, including CUSIP number, the interest rate, the par value, and the date of maturity, and shall satisfy the requirement of Section 31A-2-206(7).

E. Certificates of deposit may be deposited in amounts not to exceed federal insurance limits. The face amount of the certificate of deposit shall be deemed to be the market value.

F. Depository Agreement, Deposit Request and Withdrawal Request forms are available on request from the Insurance Department.

G. Deposits required under these rules shall apply to all insurer licensees in this state. A foreign company may deposit securities in its domiciliary state or another state with comparable deposit statutes or rules. The only acceptable deposits are those held for all policyholders.

R590-103-5. Separability.

If any provision of this rule or its application to any person or circumstance is found for any reason to be invalid, the remainder of the rule may not be affected thereby.

KEY: insurance
May 9, 1997 **31A-2-201**
Notice of Continuation December 19, 2011 **31A-2-206**

R590. Insurance, Administration.
R590-121. Rate Modification Plan Rule.
R590-121-1. Purpose.

The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and to the reporting of pertinent information concerning the utilization of such plans, in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 31A-19a-201.

R590-121-2. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers; Section 31A-2-203, Examinations; Section 31A-2-204, Conduct of Examinations; Section 31A-2-205, Examination Expenses; Sections 31A-19a-201, 31A-19a-202 and 31A-19a-203, Rate Standards; and Section 31A-23a-402, Unfair Marketing Practices.

R590-121-3. Scope.

1. This rule applies to every authorized property and casualty insurer and every rate service organization required to file rates and supplementary information under Section 31A-19a-203.

2. This rule applies to those classes of insurance, monoline or packaged, commonly known as commercial vehicle, commercial general liability and commercial property, workers' compensation and employers' liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent-to-rate risks submitted under Subsection 31A-19a-203(6).

R590-121-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301 and 31A-19a-102, and in addition thereto the following:

1. "Experience rating plan" means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

3. "Rate modification plan" means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

R590-121-5. Rule.

1. Rate modification plans.

Rate modification plans, justified according to the standards herein, are allowed by the insurance code. The commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. The use of unjustified rate modifications plans in the rating of commercial property and casualty insurance risks located in Utah is prohibited. Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Subsection 31A-19a-202(3). Any insurer subject to such an order may request a hearing pursuant to Subsection 63G-4-203 within 30 days of the date of the order. The following elements shall be considered in determining whether or not a rate modification plan is justified:

a. rate modification plans must limit their application to maximum debits or credits of 25%. Modifications generated by loss experience or company expense experience are not subject to this limitation;

b. rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used;

c. any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages;

d. rate modification plans must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprized of any corrective action that might be appropriate with respect to the insurance risk;

e. An insurer's filing of changes or revisions to rate modification plans it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer. Changes in established debits or credits for risks currently insured must be based on a change in the risk and not on a change in the provisions of a rate modification plan.

f. All initial and succeeding filing of rate modification plans must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made. To facilitate the commissioner's analysis of the rate modification plan, the filing must also include a letter or filing memorandum from the insurer which provides: (1) a comparison of the proposed changes to any existing plan as currently filed; (2) reasons and justification for the proposed changes; and (3) a statement of the estimated number of Utah insureds affected by the changes and the estimated Utah premium dollar impact of the changes.

2. Application of rate modification plans.

The following elements shall be considered in determining whether or not the application of a rate modification plan is justified. The commissioner considers the misclassification of a risk to be a modification without justification:

a. rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage or for any other purpose;

b. once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the plan results in a zero modification or no change in a previous modification applied;

c. once a rate modification plan has been applied to a risk and a credit or debit established, no changes in the established credit or debit can be made without appropriate justification and documentation;

d. individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must be present in the file to enable the commissioner to verify compliance with this rule. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk;

e. Individual underwriting files must also contain

documentation of the underwriter's evaluation of the risk under the rate modification plan. This shall consist of a worksheet which describes in some fashion the risk characteristics of the filed plan and the range of credits or debits allowed for each risk characteristic. The completed worksheet shall contain the credits, debits, or both assigned to the risk characteristics by the underwriter and the sum of the credits and debits assigned. A narrative description of the underwriter's evaluation process shall be included in the worksheet. The worksheet shall list the date of the initial and any subsequent evaluation and the signature of the person(s) making the evaluation(s). A previous worksheet may be used where no change in the risk characteristics are indicated as long as a current date and signature are entered onto the worksheet.

3. Experience rating plans.

Experience rating plans shall be calculated from at least the last three years' premium and loss data. Premium and loss figures used in the calculation must be verifiable or justifiable.

4. Reporting of pertinent information.

On the request of the commissioner, an insurer authorized to write any insurance in this state to which this rule applies shall submit data to the commissioner establishing the relationship of the aggregate premiums actually charged policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's filed unmodified rates for that line of commercial insurance. A rate service organization may file the data on behalf of the insurer.

5. Rate compliance examinations.

To determine compliance with this rule the commissioner may order a rate compliance examination be made of any insurer to which this rule applies. Any examination permitted under this rule shall be conducted pursuant to Sections 31A-2-203 and 31A-2-204. All examinations and examination-related expenses shall be paid by the insurer, as provided by Section 31A-2-205.

R590-121-6. Penalties.

Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture provisions of Section 31A-2-308.

R590-121-7. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision shall not be affected thereby.

R590-121-8. Dissemination.

Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

KEY: insurance law

1994	**31A-2-201**
Notice of Continuation December 22, 2011	**31A-2-203**
	31A-19a-201
	31A-19a-202
	31A-19a-203
	31A-23-302

R590. Insurance, Administration.
R590-126. Accident and Health Insurance Standards.
R590-126-1. Authority.

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

(1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;

(2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;

(3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health polices;

(4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;

(5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;

(6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and

(7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-126-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This regulation applies to:

(i) all individual accident and health insurance policies and group supplemental health policies and certificates, delivered or issued for delivery in this state on and after January 1, 2006, that are not specifically exempted from this regulation, regardless of:

(A) whether the policy is issued to an association; a trust; a discretionary group; or other similar grouping; or

(B) the situs of delivery of the policy or contract; and

(ii) all dental plans and vision plans.

(b) This rule shall not apply to:

(i) employer accident and health insurance, as defined in Section 31A-22-502;

(ii) policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation;

(iii) Medicare supplement policies subject to Section 31A-22-620; or

(iv) civilian Health and Medical Program of the Uniformed Services, Chapter 55, title 10 of the United States Code, CHAMPUS supplement insurance policies.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-126-3. Definitions.

In addition to the definitions of Section 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license. Adult Day Care facility may not be defined more restrictively than providing continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Conditionally Renewable" means renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health.

(6) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(7) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(8) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(9) "Disability Income" shall mean income replacement as defined in Section 31A-1-301.

(10) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid

under the policy.

(11) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(12) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(13) "Group Supplemental Health Insurance" means group accident and health insurance policies and certificates providing hospital confinement indemnity, accident only, specified disease, specified accident or limited benefit health coverage.

(14) "Guaranteed Renewable" means renewal cannot be declined by the insurance company for any reasons, but the insurance company can revise rates on a class basis.

(15) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(16) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(17) "Home Health Care" shall mean services provided by a home health agency.

(18) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(19) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(20) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(21) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(22) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(23) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(24) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(25) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(26) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(27) "Non-Cancelable" means renewal cannot be declined nor can rates be revised by the insurance company.

(28) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(29) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(30) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(31) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(32) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(33) "Optionally Renewable" means renewal is at the option of the insurance company.

(34) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of; the major, important, or essential duties of employment or occupation; customary duties of a homemaker or dependent; or may be related to a percentage of time worked or to a specified number of hours or to compensation.

(35) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(36) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(37) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided

pursuant to applicable laws.

(38) "Preexisting Condition."

(a) Except as provided in Section (b), a preexisting condition shall not be defined more restrictively than the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(b) A specified disease insurance policy shall not define preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(39) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(40) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements which is licensed and operating within the scope of such license.

(41) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the major, important, or essential duties of employment or occupation, or to the inability to perform all usual duties for as long as is usually required.

(42) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(43)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(44) "Sickness" means illness, disease, or disorder of an insured person.

(45) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(46) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(47)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(48)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(49) "Waiting Period" shall mean "Elimination Period."

R590-126-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

(i) adenoids;

(ii) appendix;

(iii) disorder of reproductive organs;

(iv) hernia;

(v) tonsils; and

(vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured

person unless the preexisting condition is specifically and expressly excluded.

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

(a) abortion;

(b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

(d) administrative exams and services;

(e) alcoholism and drug addictions;

(f) allergy tests and treatments;

(g) aviation;

(h) axillary hyperhidrosis;

(i) benefits provided under:

(i) Medicare or other governmental program, except Medicaid;

(ii) state or federal worker's compensation; or

(iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment, except dental plans;

(r) dietary products, except as required by R590-194;

(s) educational and nutritional training, except as required by R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) incarceration, with respect to disability income policies;

(cc) infertility services, except as required by R590-76;

(dd) interscholastic sports, with respect to short-term nonrenewable policies;

(ee) mental or emotional disorders;

(ff) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(gg) nuclear release;

(hh) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;

(ii) pregnancy, except for complications of pregnancy;

(jj) refractive eye surgery;

(kk) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;

(ll) respite care;

(mm) rest cures;

(nn) routine physical examinations;

(oo) service in the armed forces or units auxiliary to it;

(pp) services rendered by employees of hospitals, laboratories or other institutions;

(qq) services performed by a member of the covered person's immediate family;

(rr) services for which no charge is normally made in the absence of insurance;

(ss) sexual dysfunction;

(tt) shipping and handling, unless otherwise required by law;

(uu) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(vv) telephone/electronic consultations;

(ww) territorial limitations outside the United States;

(xx) terrorism, including acts of terrorism;

(yy) transplants;

(zz) transportation;

(aaa) treatment provided in a government hospital, except for hospital indemnity policies;

(bbb) war or act of war, whether declared or undeclared; or

(ccc) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-126-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(c) The age of the younger spouse shall be used as the

basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy, so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Cancellation, Renewability, and Termination.

The terms "conditionally renewable," "guaranteed renewable," "noncancellable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(2).

(a) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(b) Guaranteed renewable. The term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Noncancellable. The term "noncancellable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(d) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(e) Notice of nonrenewal shall be given 90 days prior to nonrenewal.

(f) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(g) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(4) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(8) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(9) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(10) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(11) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(12) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(13) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities, shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(14) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-126-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) All applications shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is

intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(f) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Accident Only Policies.

(a) An accident only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(c) An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable that are lesser than the maximum amount payable under the policy.

(8) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and schedule page.

(9) Disappearance. If a policy or certificate includes a disappearance benefit, payment must be made within the time limits provided by R590-192-9 when proof of loss, satisfactory to the company, is filed and it is reasonable to assume death occurred, but a body cannot be found.

(10) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(11) Specified Disease Insurance Buyers Guide. An insurer, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide filed with the commissioner at the time of enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(12) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(13) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(14) Basic hospital, basic medical-surgical, and basic hospital-medical surgical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(15) Dental and vision coverage policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This (policy) (certificate) provides

(dental) (vision) coverage only.

R590-126-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Section 31A-22-626 and Rule R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness, and shall include at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) $100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least $3000; or

(ii) ten times the daily hospital room and board benefits; and

(c) hospital outpatient services consisting of:

(i) hospital services on the day surgery is performed;

(ii) hospital services rendered within 72 hours after injury, in an amount not less than $250 per accident; and

(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an in-patient of the hospital to an extent not less than $200;

(d) benefits provided under Subsections (a) and (b) may be provided subject to a combined deductible amount not in excess of $200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for and shall include at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a current procedure terminology based relative value fee schedule, up to at least $1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) $100 per day.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a policy of accident and health which combines coverage and must meet the requirements of both Subsections R590-126-7(1) and (2).

(4) Hospital Confinement Indemnity Coverage.

(a) Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(b) Coverage includes an indemnity amount of not less than $50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(c) Benefits shall be paid regardless of other coverage.

(5) Income Replacement Coverage.

Income replacement coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both that:

(a) contains an elimination period no greater than:

(i) 90-days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(b) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;

(c) where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required;

(d) a policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability;

(e) the provisions of this subsection do not apply to policies providing business buyout coverage.

(6) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least $1,000 and a single dismemberment amount shall be at least $500.

(7) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than $1,000 for accidental death, $1,000 for double dismemberment and $500 for single dismemberment.

(8) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases, and includes critical illness coverages. Any such policy shall meet these general provisions. The policy shall also meet the standards set forth in the applicable Subsections R590-126-

7(8)(b), (c) or (d).

(a) General Provisions.

(i) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this Subsection (8).

(ii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead.

(iii) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(iv) Renewability. Specified disease coverage shall be at least guaranteed renewable.

(v) Probationary period. No policy issued pursuant to this section may contain a probationary period greater than 30 days.

(vi) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(vii) Medical Care. Payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment.

(viii) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(ix) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(x) Hospice. Hospice care is an optional benefit, but if offered it shall meet the following minimum standards:

(A) eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectance of six months or less;

(B) fixed-sum payment of at least $50 per day; and

(C) lifetime maximum benefit of at least $10,000.

(b) Expense Incurred Benefits. The following benefit standards apply to specified disease coverage on an expense-incurred basis.

(i) Policy limits. A deductible amount not to exceed $250, an aggregate benefit limit of not less than $25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment, which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse, or licensed practical nurse;

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and eleostomy appliances;

(N) prosthetic devices including wigs and artificial breasts;

(O) nursing home care for non-custodial services; and

(P) reconstructive surgery when deemed necessary by the attending physician.

(c) Per Diem Benefits. The following benefit standards apply to specified disease coverage on a per diem basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least $200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) blood and plasma benefit with a fixed-sum benefit of at least $50 per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least 365 days of treatment.

(ii) Benefits tied to confinement in a skilled nursing home or home health care are optional. If a policy offers these benefits, they must equal the following:

(A) fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(B) fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(C) Any restriction or limitation applied to the benefits may not be more restrictive than those under Medicare.

(d) Lump Sum Benefits. The following benefit standards apply to specified disease coverage on a lump sum basis.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of $1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(9) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the standards for benefits required under this Section. These policies or contracts may be delivered or issued for delivery with the outline of coverage required by Section R590-126-8.

R590-126-8. Outline of Coverage Requirements.

(1) Basic Hospital Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

BASIC HOSPITAL EXPENSE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Basic hospital expense coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital out-patient services; and other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(3). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)

BASIC HOSPITAL/MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic hospital/medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
hospital outpatient services;
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) Hospital Confinement Indemnity Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)

HOSPITAL CONFINEMENT INDEMNITY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Hospital confinement indemnity coverage is designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a

covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.
A brief specific description of the benefits in the following order:
daily benefit payable during hospital confinement; and
duration of benefit.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.
Any benefits provided in addition to the daily hospital benefit.

(5) Income Replacement Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)

INCOME REPLACEMENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Income replacement coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits contained in the policy.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(6) Accident Only Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI

(COMPANY NAME)

ACCIDENT ONLY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Accident only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(7) Specified Accident Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII

(COMPANY NAME)

SPECIFIED ACCIDENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified accident coverage is designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(8) Specified Disease Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII

(COMPANY NAME)

SPECIFIED DISEASE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage.
Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.
Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control.
The policy itself sets forth in detail the rights and obligations of both you and your insurance company.
It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate

to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(9) Limited Benefit Health Coverage.

Except for dental or vision plans, an outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the standards of Subsections R590-126-7(1) through (8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX

(COMPANY NAME)

LIMITED BENEFIT HEALTH COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage.
A brief specific description of the benefits, including amounts.
A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(10) Dental Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X

(COMPANY NAME)

DENTAL COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL DENTAL EXPENSES
OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(11) Vision Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)

VISION COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL VISION EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(12) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to or upon the sale of an individual accident and health insurance policy as required in this rule.

(13) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.

(14) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies, which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(15) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(16) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-126-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of

and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
The above "Notice to Applicant" was delivered to me on:
.....
(Date)
.....
(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE XIII

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy.
For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.
COMPANY NAME

R590-126-10. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule January 1, 2006.

R590-126-11. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance

March 12, 2009	**31A-2-201**
Notice of Continuation December 19, 2011	**31A-2-202**
	31A-21-201
	31A-22-605
	31A-22-623
	31A-22-626

R590. Insurance, Administration.
R590-133. Variable Contracts.
R590-133-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement Title 31A and Subsection 31A-20-106(1)(b)(ii) that gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.

R590-133-2. Definition.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Variable contract," means a policy or contract that provides life insurance or annuity benefits that may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.

B. "Variable contract producer," means a licensed producer or licensed consultant with a variable contracts line of authority.

R590-133-3. Qualification of Insurers to Issue Variable Contracts.

No insurer may deliver or issue for delivery a variable contract within this state unless the insurer is licensed to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.

R590-133-4. Governance of Separate Accounts.

All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.

R590-133-5. Required Reports.

A. An insurer issuing an individual variable contract providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at the last address known to the insurer, a statement or statements reporting the investments held in the separate account.

B. The insurer shall submit annually to the commissioner a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

C. An insurer issuing an individual variable contract shall mail to the contract holder, at least once in each contract year after the first, at the last address known to the insurer, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) in the case of an annuity contract under which payments have not yet commenced:

(a) the number of accumulation units credited to the contract and the dollar value of a unit; or

(b) the value of the contract holder's account; and

(2) in the case of a life insurance policy, the dollar amount of the death benefit.

R590-133-6. Foreign Insurers.

If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the contract holders and the public that is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate in the commissioner's discretion, may consider compliance with the law or rule as compliance with this rule.

R590-133-7. Licensing of Variable Contract Producers.

(A) No producer or consultant is eligible to sell, offer for sale, or make a recommendation to purchase or terminate a variable contract unless licensed as a variable contract producer prior to making a solicitation, sale, or recommendation.

(B) The licensing as a variable contract producer may not become effective until satisfactorily completing the following requirements:

(1) be licensed in the line of life insurance;

(2) evidence that the applicant has previously passed Financial Industry Regulatory Authority examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

(3) evidence of being Utah approved from the Financial Industry Regulatory Authority, Central Registration Depository;

(4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

(5) every application for a license as a variable contract producer shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

R590-133-8. Additional Provisions Applicable to Variable Contract Producers.

A. Aperson licensed in this state as a variable contract producer shall immediately report to the commissioner:

(1) any suspension or revocation of the variable contract producer's license or life insurance producer's license in any other state or territory of the United States;

(2) the imposition of any disciplinary sanction imposed upon the producer by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

(3) any judgment or injunction entered against the producer on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract producer's license upon any ground that would bar the application or the producer from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance producer's license shall also govern any proceeding for suspension or revocation of a variable contract producer's license.

C. Renewal of a variable contract producer's license shall follow the same procedure established for renewal of a life insurance producer's license.

R590-133-9. Disclosure.

(A). The following information shall be furnished to an applicant for a variable contract prior to execution of the application:

(1) a summary description of the insurer and its principal activities;

(2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) a brief description of the investment policy for the separate account with respect to the contract;

(4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

(5) summary financial statements of the insurer and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement, the summary required may be based upon the annual statement immediately preceding the last

annual statement filed with the commissioner.

B. The insurer may include additional information as the insurer deems appropriate.

R590-133-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-133-11. Enforcement Date.

The commissioner will begin enforcing this rule 30 days from the rule's effective date.

R590-133-12. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions may not be affected.

KEY: insurance law
January 10, 2011 31A-2-201
Notice of Continuation December 22, 2011 31A-20-106

R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection 63G-4-102(6), Subsection 63G-4-203(1) and other applicable sections of Chapter 4 of Title 63G providing for rules governing adjudicative proceedings.

R590-160-2. Purpose and Scope.

1(a) Purpose: This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or the commissioner's designee.

(b) Public hearings under Section 63G-3-302 are not covered by this rule.

(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.

R590-160-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.

(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

(5) "Petitioner" is a person seeking agency action.

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

R590-160-4. Designations of Proceedings.

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63G-4-202(3).

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.

(b) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.

(c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right side, docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of

Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63G-4-206.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request

of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery may be had as the parties may agree or pursuant to an order of the presiding officer.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-7. Rules Applicable to Informal Proceedings.

(1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

(2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.

(4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-8. Agency Review.

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63G-4-301.

(3) Review shall be conducted by the commissioner or a person or persons designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b). The request for agency review shall include a copy of the order, which is the subject of the request.

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority; and

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.(5)(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The commissioner may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the commissioner or the commissioner's designee.

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

(ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The commissioner may order or permit oral argument if the commissioner determines such argument is warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on the effective date of the rule

R590-160-11. 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 severable.

KEY: insurance

December 29, 2011	**31A-2-201**
Notice of Continuation October 30, 2008	**63G-4-102**
	63G-4-203

R590. Insurance, Administration.
R590-176. Health Benefit Plan Enrollment.
R590-176-1. Authority.

The commissioner's authority to promulgate this rule is provided in Sections 31A-2-201(3) and 31A-2-202(2).

R590-176-2. Purpose and Scope.

The purpose and scope of this rule is to provide enrollment requirements under Section 31A-30-108 for carriers who provide health benefit plan coverage to individuals and small employers as stated in Section 31A-30-104.

R590-176-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

(2) "Carrier" means a covered carrier as defined in Section 31A-30-103.

(3) "Time period" means the period such as daily, weekly or monthly, as determined by the carrier, in which applications are grouped.

R590-176-4. General Provisions.

(1) Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Section 31A-30-108.

(2) Enrollment shall be equally available through all distribution systems, classes of business, and rating criteria categorizations.

(3) Enrollment is available to small employers without respect to whether any eligible employee or dependent is classified as uninsurable.

(4) The enrollment residency requirements do not supersede other dependent and child requirements of the Insurance Code.

(5) A carrier must offer a basic health care plan in compliance with Sections 31A-22-613.5 and 31A-30-109.

(6) A carrier may not market or encourage producers to market individual or small employer health benefit plans in such a way that there is a lessened incentive to insure business with greater health risks.

(7) Commission schedules shall be structured in compliance with R590-207, Health Agent Commissions for Small Employer Groups.

(8) The carrier shall retain a signed statement from each covered small employer that the carrier offered to accept all eligible employees and their dependents at the same level of benefits under the health benefit plan provided to the employer.

(9) An individual or small employer is considered uninsured if the individual or small employer:

(a) does not have a health benefit plan; or

(b) health benefit plan is with a carrier that has made an election under Subsections 31A-8-402.3(3)(e), 31A-8-402.5(3)(e), 31A-22-721(3)(e), 31A-30-107(3)(e), or 31A-30-107.1(3)(e).

(10) All records regarding enrollment applications and underwriting determinations shall:

(a) be retrievable for examination by the time period the application was received;

(b) include all documents, indicating the applicable date, pertaining to the application and its underwriting; and

(c) be retained for the current year plus three years.

(11) The documents indicated in subsection (10)(b) would include:

(a) application and date received,

(b) notifications to the applicant and the date of notification;

(c) records used in underwriting and date received; and

(d) underwriting decision and date of decision.

R590-176-5. Application and Enrollment.

(1) An individual carrier shall establish a procedure to determine the order of applications. The procedure shall group the applications into consistent time periods. The enrollment cap may not be applied until the end of the time period in which it is met. The individual carrier shall keep a record of all applications for coverage that includes the time period an application is received by the carrier.

(2) All applications shall be treated consistently.

(3)(a) A complete application shall be processed and a written notice of the decision communicated to the applicant within 30 days of the decision. If an application is denied, the decision must include specific details explaining the denial.

(b) The carrier may not require that an application be complete in order to qualify as an application for coverage.

(c) If an application is incomplete, within 15 days from receipt of the application, a carrier shall notify the applicant of the areas that are incomplete and the information required to complete the application.

(d) Before an application can be filed as incomplete, applicants shall have at least 30 days, after being notified additional information is required.

(e) A date earlier than the postmarked date of the notice in Subsection (3)(c), may not be used as the date of notification.

(4) The acceptance of an application may not be delayed pending the receipt of medical records. This does not apply to other required statements from applicants as provided in Subsection (3).

R590-176-6. Small Employer Enrollment.

A small employer carrier shall:

(1) permit an eligible employee, or a dependent of such employee, to enroll for coverage under the terms of the plan, if the eligible employee requests enrollment not later than 30 days after the eligibility date; and

(2) enroll a new eligible employee and a dependent of such employee making timely application for coverage in a small employer group with existing coverage.

R590-176-7. Individual Underwriting Criteria.

(1) Each carrier shall determine the number of individuals classified as uninsurable at initial enrollment. This determination shall be made in accordance with this rule.

(2) An individual insured by the Utah Comprehensive Health Insurance Pool is classified as uninsurable.

(3) (a) An individual may be classified as uninsurable if the individual has:

(i) one or more medical conditions; or

(ii) one or more prescriptions; and

(iii) the conditions, prescriptions, or both, are determined to have a total number of debit points equal to or greater than 99 debit points in the aggregate consistent with the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, taking into account;

(A) elapsed time;

(B) additional criteria; and

(C) exception criteria.

(b) A carrier may not take into account conditions for which coverage is not provided. This includes conditions excluded as a pre-existing condition for which treatment is expected during the exclusion period if the applicant would not be considered uninsurable after the treatment.

(4) Determinations made by an insurer under Subsection (3)(iii) will be audited by an experienced independent underwriter retained by the board of the Utah Comprehensive Health Insurance Pool who will rely on the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, to evaluate whether the debit points of the medical conditions, prescriptions, or both are equal to or greater than 99

debit points in the aggregate.

(5) A carrier may appeal a determination by the auditor under Section 3 that an individual has a combination of conditions, prescriptions, or both, that cause that individual to have debit points less than the number of debit points determined under Section (3) to the commissioner. The commissioner may appoint a designee to review these appeals.

(6) Only individuals enrolling under Subsection 31A-30-108(3) may be counted as uninsurable.

R590-176-8. Individual Carrier Enrollment Cap Calculation and Certification.

(1) Pursuant to Section 31A-30-110, an individual carrier may not decline enrollment until the carrier has:

(a) met its enrollment cap; and

(b) submitted a certification to the department in compliance with this section.

(2) An individual carrier may limit enrollment after submitting its certification.

(3) The commissioner may require additional enrollment after reviewing the certification.

(4) An officer of the individual carrier shall submit a certification that:

(a) lists the UC and CI as defined in Section 31A-30-103(28);

(b) lists the number of individual natural covered lives at the time of the certification;

(c) categorizes the UC into new applicants added to existing policies and newly issued policies;

(d) identifies the number of Comprehensive Health Insurance Pool participants; and

(e) identifies the qualifying conditions, prescriptions, or both that cause the persons making up the carrier's UC to be considered uninsurable under Section 31A-30-106(1)(j)and Rule R590-176.

(5) Carriers, whose coverage count exceeds 200% of the coverage count as of the end of the prior year, shall determine the uninsurable percentage using counts as of the end of the most recent calendar quarter.

R590-176-9. Solvency Waiver.

A carrier that expects the requirements of Chapter 30 to place the carrier in supervision, insolvency or liquidation shall, within 15 days of such determination, submit a report to the commissioner. The report shall detail the financial consequences of Chapter 30 and request the specific waivers or modifications required to prevent supervision, insolvency or liquidation.

R590-176-10. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-176-11. Severability.

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected thereby.

KEY: health insurance
November 18, 2008 31A-2-201
Notice of Continuation December 19, 2011 31A-2-202

R590. Insurance, Administration.
R590-181. Yankee Bond Rule.
R590-181-1. Authority.

This rule is adopted pursuant to Section 31A-18-105(13), which allows the commissioner to authorize investments other than those enumerated in Section 31A-18-105.

R590-181-2. Purpose and Scope.

A. The purpose of this rule is to permit insurers to invest, within the limits prescribed by this rule, in bonds which are denominated in U.S. Dollars and which are issued by foreign governments, or by entities backed by foreign governments, or by corporations not domiciled in the United States of America. Such instruments are commonly referred to as "Yankee Bonds."

B. This rule applies to all insurers transacting business in Utah.

R590-181-3. Definitions.

For the purpose of this rule, the following definitions will apply:

A. A "Yankee Bond" is a fixed income bond issued in U.S. Dollar denominations by foreign governments, by entities whose bonds are guaranteed by foreign governments, or by corporations not domiciled in the United States of America.

B. "Investment Quality" means a quality rating of "1" or "2" assigned by the National Association of Insurance Commissioners' Securities Valuation Office ("SVO"). Yankee Bonds which are not SVO rated at the time of purchase by the insurer must be submitted to the SVO for rating within 90 days of purchase. Bonds which are unrated at the time of purchase by the insurer may be temporarily considered to be investment quality if the insurer can demonstrate to the satisfaction of the commissioner that an SVO rating of "1" or "2" is likely. However, this assumption of quality shall only be in effect until rating by the SVO is completed.

C. "Qualified assets" are defined in section 31A-17-201(2).

R590-181-4. Rule.

A. An insurer may invest in Yankee Bonds of investment quality to the extent of 20% of the insurer's qualified assets.

B. Subject to Subsection C, below, for all investments in Yankee Bonds of investment quailty issued by a single entity, its affiliates, and subsidiaries, an insurer is limited to 3% of the insurer's qualified assets.

C. For all investments in Yankee bonds of Investment Quality issued by entities within any single sovereign foreign nation, an insurer is limited to 5% of the insurer's qualified assets if all the bonds are rated "1" by the SVO and limited to 3% of the insurer's qualified assets if any of the bonds are rated "2" by the SVO.

R590-181-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the rule and the application of this revision to other persons or circumstances may not be affected.

KEY: insurance
February 24, 1997 31A-18-105
Notice of Continuation December 19, 2011

R590. Insurance, Administration.
R590-182. Risk Based Capital Instructions.
R590-182-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the commissioner by Section 31A-2-201 and the specific authority granted by Subsection 31A-17-601(7).

R590-182-2. Scope.

This rule applies to all health organizations, as defined in Subsection 31A-17-601(3), to all life or accident and health insurers, as defined in Subsection 31A-17-601(4), and to all property and casualty insurers, as defined in Subsection 31A-17-601(5) required by Subsections 31A-17-602(1) or 31A-17-610(1)(a) to file risk based capital reports (RBC).

R590-182-3. Rule.

A. The instructions contained in Subsection 31A-17-602(2) shall be used by life or accident and health insurers in preparing and filing RBC reports.

B. The instructions contained in Subsection 31A-17-602(3) shall be used by property and casualty insurers in preparing and filing RBC reports.

C. The instructions contained in Subsection 31A-17-602(4) shall be used by health organizations in preparing and filing RBC reports.

R590-182-4. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
April 18, 2002 31A-17-601(4)
Notice of Continuation December 19, 2011

R590. Insurance, Administration.
R590-192. Unfair Accident and Health Claims Settlement Practices.
R590-192-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A and to make rules to implement the provisions of Title 31A. Further authority to provide for timely settlement of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely, accurate, and complete response to the commissioner is provided by Subsections 31A-2-202(4) and (6).

R590-192-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of accident and health insurance claims arising under policies or certificates issued in the State of Utah. These standards include fair and rapid settlement of claims, protection of claimants under insurance policies from unfair claims settlement practices, and the promotion of the professional competence of those engaged in processing of claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim practices and responses to the commissioner. This rule is regulatory in nature and is not intended to create a private right of action.

R590-192-3. Applicability and Scope.

(1) This rule applies to all accident and health insurance policies, as defined by Section 31A-1-301.

(2) This rule incorporates by reference 29 CFR 2560.503-1, excluding 2560.503-1(a).

R590-192-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 29 CFR 2560.503-1(m), and the following:

(1)(a) "Adverse benefit determination" means, for an accident and health insurance policy other than a health benefit plan, any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of or failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise experimental or investigational or not medically necessary or appropriate; and

(b)(i) "Adverse benefit determination" means, for a health benefit plan:

(A) based on the insurer's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(I) denial of a benefit;

(II) reduction of a benefit;

(III) termination of a benefit; or

(IV) failure to provide or make payment, in whole or part, for a benefit; or

(B) rescission of coverage.

(ii) "Adverse benefit determination" includes:

(A) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(B) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(C) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(I) experimental;

(II) investigational; or

(III) not medically necessary or appropriate.

(2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "Claimant" means an insured, or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(5) "Ongoing" or "Concurrent care" decision means an insurer has approved an ongoing course of treatment to be provided over a period of time or number of treatments.

(6) "Days" means calendar days.

(7) "Documentation" means a document, record, or other information that is considered relevant to a claimant's claim because such document, record, or other information:

(a) was relied upon in making the benefit determination;

(b) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; and

(c) in the case of an insurer providing disability income benefits, constitutes a statement of policy or guidance with respect to the insurer concerning the denied treatment option or benefit for the insured's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(8) "General business practice" means a pattern of conduct.

(9) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverage afforded by an insurance policy.

(10) "Medical necessity" means:

(a) health care services or product that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists, medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For an intervention not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For an established intervention, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(11) "Notice of Loss" means that notice which is in accordance with policy provisions and insurer practices. Such notice shall include any notification, whether in writing or other means, which reasonably apprizes the insurer of the existence of

or facts relating to a claim.

(12) "Pre-service claim" means any claim for a benefit under an accident and health policy with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(13) "Post-service claim" means any claim for a benefit that is not a pre-service claim or urgent care claim.

(14) "Scientific evidence" is:

(a)(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes;

(b) scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(15) "Urgent care claim" means any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determination:

(a) could seriously jeopardize the life or health of the insured or the ability of the insured to regain maximum function; or

(b) in the opinion of a physician with knowledge of the insured's medical condition, would subject the insured to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

R590-192-5. File and Record Documentation.

Each insurer's claim files are subject to examination by the commissioner. To aid in such examination:

(1) Sufficient detailed documentation shall be contained in each claim file in order to reconstruct the benefit determination, and the calculation of the claim settlement for each claim.

(2) Each document within the claim file shall be noted as to date received, date processed and notification date.

(3) The insurer shall maintain claim data that is accessible and retrievable for examination. An insurer shall be able to provide:

(a) the claim number;
(b) copy of all applicable forms;
(c) date of loss;
(d) date of claim receipt;
(e) date of benefit determination;
(f) date of settlement of the claim; and
(g) type of settlement indicated as:
(i) payment, including the amount paid;
(ii) settled without payment; or
(iii) denied.

R590-192-6. Disclosure of Policy Provisions.

(1) An insurer, or the insurer's claim representative, shall fully disclose to a claimant the benefits, limitations, and exclusions of an insurance policy which relate to the diagnoses and services relating to the particular claim being presented.

(2) An insurer, or the insurer's claim representative, must disclose to a claimant provisions of an insurance policy when receiving inquiries regarding such coverage.

R590-192-7. Notice of Loss.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

(2) Notice of loss may be given to the insurer or its claim representative unless the insurer clearly directs otherwise by means of policy provisions or a separate written notice mailed or delivered to the claimant.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by any authorized claim representative of the insurer.

(4) The general business practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-192-8. Notification.

(1) The insurer shall provide notification of the benefit determination to the claimant which includes:

(a) the specific reason or reasons for the benefit determination, adverse or not;

(b) reference to the specific plan provisions on which the benefit determination is based;

(c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(d) a description of the insurer's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring civil action.

(2) For a health benefit plan, except for a grandfathered health benefit plan as defined in 45 CFR 147.140, a notice of adverse benefit determination shall provide:

(a) starting with the plan year that begins on or after July 1, 2011:

(i) sufficient information to identify the claim involved, including the date of service, the health care provider, and the claim amount, if applicable; and

(ii) notification of assistance available at the Utah Insurance Department, Office of Consumer Health Assistance, Suite 3110, State Office Building, Salt Lake City UT 84114; and

(b) starting with the plan year that begins on or after January 1, 2012:

(i) the availability, upon request, of the diagnosis code and treatment code with the corresponding meaning for each; and

(ii) the content in a culturally and linguistically appropriate manner as required by 45 CFR 147.136 (e).

(3) An insurer and the insurer's claim representative, in the case of a failure by a claimant to follow the individual or group health plan's procedures for filing a pre-service claim, shall notify the claimant, of the failure and provide the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant as soon as possible, but not later than five days, or 24 hours for a claim involving urgent care, following the failure. Notification may be oral, unless written notification is requested by the claimant.

(4) Disability income adverse benefit determinations must:

(a) if an internal rule, guideline, protocol, or other criterion was relied upon in making the adverse determination, provide either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(b) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, provide either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the insured's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(5) Urgent care adverse benefit determination must:

(a) provide written or electronic notification to the

claimant no later than three days after the oral notification; and

(b) provide a description of the expedited review process applicable to such claims.

R590-192-9. Minimum Standards for Claim Benefit Determination and Settlement.

(1) All benefit determination time limits begin once the insurer receives a claim, without regard to whether all necessary information was filed with the original claim. If the insurer requires an extension due to the claimant's failure to submit necessary information, the time for making a decision is tolled from the date the notice is sent to the claimant through:

(a) the date that the claimant provides the necessary information; or

(b) 48 hours after the end of the period afforded the claimant to provide the specified additional information.

(2) Urgent Care Claims:

(a) In a case of urgent care, an insurer shall notify the claimant of the insurer's benefit decision, adverse or not, as soon as possible, taking into account the medical exigencies of the situation, but no later than 72 hours after the receipt of the claim

(b)It is the insurer's duty to determine whether a claim is urgent based on the information provided by the claimant. If the claimant does not provide sufficient information for the plan to make a decision, the plan must notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim, of the specific information that is required. The claimant shall be given reasonable time, but not less than 48 hours, to provide that information.

(ii) The insurer must notify the claimant of the insurer's decision as soon as possible but not later than 48 hours after the earlier of the plan's receipt of the requested information or the end of the time given to the claimant to provide the information.

(3) Concurrent Care Decision:

(a) Reduction or termination of concurrent care:

(i) Any reduction in the course of treatment is considered an adverse benefit determination.

(ii) The insurer must give the claimant notice, with sufficient time to appeal that adverse benefit determination and sufficient time to receive a decision of the appeal before any reduction or termination of care occurs.

(b) Extension of concurrent care:

(i) A claimant may request an extension of treatment beyond what has already been approved.

(ii) If the request for an extension is made at least 24 hours before the end of the approved treatment, the insurer must notify the claimant of the insurer's decision as soon as possible but no later than 24 hours after receipt of the claim.

(iii) If the request for extension does not involve urgent care, the insurer must notify the claimant of the insurer's benefit decision using the response times for a post-service claim.

(4) Pre-Service Benefit Determination:

(a) An insurer must notify the claimant of the insurer's benefit decision within 15 days of receipt of the request for care.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 15 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(d) once the pre-service claim determination has been made and the medical care rendered, the actual claim filed for payment will be processed according to the time requirements of a post-service claim.

(5) Post-Service Claims:

(a) An insurer must notify the claimant of the insurer's benefit decision within 30 days of receipt of the request for claim.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 30 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(6) A health benefit plan is required to provide continued coverage for an ongoing course of treatment pending the outcome of an internal appeal.

(7) Except for a grandfathered individual health benefit plan as defined in 45 CFR 147.140, an insurer offering an individual health benefit plan shall provide only one level of internal appeal before the final determination is made.

R590-192-10. Minimum Standards for Disability Income Benefit Determination and Settlement.

In the case of a claim for disability income benefits, the insurer shall notify the claimant, of the insurer's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the insurer.

(1) This period may be extended by the insurer for up to 30 days, provided that the insurer determines that such an extension is necessary due to matters beyond the control of the insurer and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the insurer expects to render a decision.

(2) If, prior to the end of the first 30-day extension period, the insurer determines that, due to matters beyond the control of the insurer, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided the insurer notifies the claimant prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date at which the insurer expects to render a decision.

(3) Each notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

R590-192-11. Minimum Standards for Responses to the Commissioner.

(1) Every insurer, upon receipt of an inquiry from the commissioner regarding a claim, shall furnish the commissioner with a substantive response to the inquiry within the appropriate number of days indicated by such inquiry. If it is determined by the insurer that they are unable to respond in the time frame requested, the insurer may contact the commissioner to request an extension.

(2) The insurer shall acknowledge and substantively respond within 15 days to any written communication from the claimant relating to a pending claim.

R590-192-12. Unfair Methods, Deceptive Acts and Practices Defined.

The commissioner, pursuant to Subsection 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly

discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2)(a) failing to provide the claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such alleged misrepresentation is the basis for the denial.

(b) For a health benefit plan, misrepresentation means an intentional misrepresentation of a material fact;

(3) compensation by an insurer of its employees, producers or contractors of any amounts which are based on savings to the insurer as a result of denying or reducing the payment of claims, unless compensation relates to the discovery of billing or processing errors;

(4) failing to deliver a copy of standards for prompt investigation of claims to the commissioner when requested to do so;

(5) refusing to settle claims without conducting a reasonable and complete investigation;

(6) denying a claim or making a claim payment to the claimant not accompanied by a notification, statement or explanation of benefits setting forth the exclusion or benefit under which the denial or payment is being made and how the payment amount was calculated;

(7) failing to make payment of a claim following notice of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(8) advising a claimant not to obtain the services of an attorney or other advocate or suggesting that the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(9) misleading a claimant as to the applicable statute of limitations;

(10) deducting from a loss or claims payment made under one policy those premiums owed by the claimant on another policy, unless the claimant consents to such arrangement;

(11) failing to settle a claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(12) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(13) refusing to provide a written reason for the denial of a claim upon demand of the claimant;

(14) refusing to pay reasonably incurred expenses to the claimant when such expenses resulted from a delay, as prohibited by this rule, in the claim settlement;

(15) failing to pay interest at the legal rate in Title 15:

(a) upon amounts that are due and unpaid within 20 days of completion of investigation; or

(b) to a health care provider on amounts that are due and unpaid after the time limits allowed under 31A-26-301.6 ;

(16) failing to provide a claimant with an explanation of benefits; and

(17) for a health benefit plan:

(a) failing to allow a claimant to review the claim file and to present evidence and testimony as part of the claim and appeal processes;

(b) failing to provide the claimant, at no cost, with any new or additional evidence considered, relied upon, or generated by the insurer in connection with the claim; or

(c) failing to ensure that all claims and appeals are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision.

R590-192-13. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R590-192-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date.

KEY: insurance law

December 8, 2011	**31A-1-301**
Notice of Continuation June 25, 2009	**31A-2-201**
	31A-2-204
	31A-2-308
	31A-21-312
	31A-26-303

R590. Insurance, Administration.
R590-203. Health Grievance Review Process.
R590-203-1. Authority.

This rule is specifically authorized by Subsections 31A-22-629(4) and 31A-4-116, which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine carrier records, files, and documentation is provided by Section 31A-2-203.

R590-203-2. Purpose.

The purpose of this rule is to ensure that a carrier's grievance review procedures for individual and group health insurance and disability income insurance plans comply with 29 CFR 2560.503-1, and Sections 31A-4-116 and 31A-22-629.

R590-203-3. Applicability and Scope.

(1) This rule applies to individual and group:
(a) health care insurance;
(b) disability income policies; and
(c) health maintenance organization contracts.
(2) Long Term Care and Medicare supplement policies are not considered health insurance for the purpose of this rule.
(3) Disability income policies are exempt from R590-203-6.
(4) This rule does not apply to a health benefit plan that complies with R590-261, Health Benefit Plan Adverse Benefit Determinations.

R590-203-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:
(1)(a) "Adverse benefit determination" means the:
(i) denial of a benefit;
(ii) reduction of a benefit;
(iii) termination of a benefit; or
(iv) failure to provide or make payment, in whole or in part, for a benefit.
(b) "Adverse benefit determination" includes:
(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a plan;
(ii) a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of a utilization review; and
(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:
(A) experimental;
(B) investigational; or
(C) not a medical necessity or appropriate.
(2) "Carrier" means any person or entity that provides health insurance or disability income insurance in this state including:
(a) an insurance company;
(b) a prepaid hospital or medical care plan;
(c) a health maintenance organization;
(d) a multiple employer welfare arrangement; and
(e) any other person or entity providing a health insurance or disability income insurance plan under Title 31A.
(3) "Consumer Representative" may be an employee of the carrier who is a consumer of a health insurance or a disability income policy, as long as the employee is not:
(a) the individual who made the adverse determination; or
(b) a subordinate to the individual who made the adverse determination.
(4) "Medical Necessity" means:
(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:
(i) in accordance with generally accepted standards of medical practice in the United States;
(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;
(iii) not primarily for the convenience of the patient, physician, or other health care provider; and
(iv) covered under the contract; and
(b) that when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.
(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.
(ii) For established interventions, the effectiveness shall be based on:
(A) scientific evidence;
(B) professional standards; and
(C) expert opinion.
(5)(a) "Scientific evidence" means:
(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or
(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.
(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.
(6)(a) "Urgent care claim" means a request for a health care service or course of treatment with respect to which the time periods for making non-urgent care request determination:
(i) could seriously jeopardize the life or health of the insured or the ability of the insured to regain maximum function; or
(ii) in the opinion of a physician with knowledge of the insured's medical condition, would subject the insured to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.
(b)(i) Except as provided in Subsection (6)(a)(ii), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine.
(ii) Any request that a physician with knowledge of the insured's medical condition determines is an urgent care request within the meaning of Subsection (6)(a) shall be treated as an urgent care claim.

R590-203-5. Adverse Benefit Determination.

(1) A carrier's adverse benefit determination review procedure shall be compliant with the adverse benefit determination review requirements set forth in 29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department.
(2) A carrier's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.

R590-203-6. Independent and Expedited Adverse Benefit

Determination Reviews for Health Insurance.

(1) A carrier shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations of medical necessity.

(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the carrier, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.

(3) Independent review organizations shall be designated by the carrier, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.

(4) The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.

(5) A carrier's voluntary independent review procedure shall:

(a) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

(b) agree that any statute of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending;

(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2);

(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not affect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, and the process for selecting the decision maker.

(e) An independent review conducted in compliance with Section 31A-22-629, and this rule, can be binding on both parties. A claimant's submission to a binding independent review is purely voluntary and appropriate disclosure and notification must be given as required by 29 CFR 2560.503-1.

(6) Standards for voluntary independent review:

(a) The carrier's internal adverse benefit determination process must be exhausted unless the carrier and claimant mutually agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) A carrier shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(3), (i)(2) and (j).

(7) A carrier shall provide an expedited review process for cases involving urgent care claims.

(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing. If the request is made orally a carrier shall, within 24 hours, send written confirmation to the claimant acknowledging the receipt of the request for an expedited review.

(9) An expedited review requires:

(a) all necessary information, including the plan's original benefit determination, be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) a carrier to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) a carrier to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(i)(2)(i), and 503-1(j).

(10) This section, R590-203-6, does not apply to disability income policies.

R590-203-7. Disability Income Adverse Benefit Determination Review.

(1) A carrier will notify a claimant of the benefit determination within 45 days of receipt of the claimant's request for review of an adverse benefit determination.

(2) The time period for making a determination on review may be extended for up to 45 days when necessary due to matters beyond the control of the carrier.

(3) If the time period is extended due to the claimant's failure to submit information necessary to decide a claim, the time period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent until the date on which the claimant responds to the request for additional information.

(4) Upon request, relevant information, free-of-charge, must be provided to the claimant on any adverse benefit determination.

R590-203-8. File and Record Documentation.

A carrier shall:

(1) make available upon request by the commissioner all adverse benefit determination review files and related documentation; and

(2) shall maintain these records for the current calendar year plus five years.

R590-203-9. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-203-10. Severability.

If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance

December 8, 2011	**31A-2-201**
Notice of Continuation April 17, 2007	**31A-2-203**
	31A-4-116
	31A-22-629

R590. Insurance, Administration.
R590-225. Submission of Property and Casualty Rate and Form Filings.
R590-225-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), and 31A-19a-203.

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) property and casualty and title form filings required by Section 31A-21-201;

(b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;

(c) service contract form filings required by Subsection 31A-6a-103(2)(a); and

(d) bail bond form filings required by Sections 31A-35-607 and Rule R590-196.

(e) guaranteed asset protection waiver filings required by 31A-6b-202(b) and 31A-6b-203.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond, service contracts, and guaranteed asset protection waivers.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, http://www.insurance.utah.gov.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2009;

(b) "NAIC Property and Casualty Transmittal Document (Instructions)", dated January 1, 2009;

(c) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, 2009;

(d) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated October 2003;

(e) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated October 2003.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond, service contracts, and guaranteed asset protection waivers.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to section R590-225-12 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: bail bond agencies, service contract providers, and guaranteed asset protection providers may choose to use email instead of SERFF to submit a filing.

(2) A filing must be submitted by market type and type of insurance, not by annual statement line number.

(3) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.

(4) A filer may submit a filing for more than one insurer if all applicable companies are listed.

(5) SERFF Filing.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rates and supplementary rating information must be attached to the Rate/Rule Schedule tab.

(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(6) A complete EMAIL filing consists of the following when submitted by a bail bond agent, a service contract provider, or a guaranteed asset protection provider:

(a) The title of the EMAIL must display the company name only.

(b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in section R590-225-3(2), must be properly completed.

(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(A) "NAIC Coding Matrix;"

(B) "NAIC Instruction Sheet;" and

(C) "Utah Property and Casualty Content Standards."

(ii) Do not submit the documents described in (A), (B), and (C) with the filing.

(c) Filing Description. Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

R590-225-7. Procedures for Form Filings.

(1) Forms in general:

(a) Forms are "File And Use" filings. EXCEPTION: service contracts, and guaranteed asset protection waivers are "File Before Use".

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.

(b) Your filing must be received by the department before the RSO effective date.

(c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service contract providers, bail bond agencies, and guaranteed asset protection providers are exempt from this section.

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a detailed explanation of why must be provided with the filing.

(9) Rate deviation, prospective loss cost, and loss cost multiplier.

(a) In the past, a rate deviation filing was common.

(i) A rate deviation consisted of a modification, usually a percentage decrease or increase, to a RSO manual rate or supplementary information.

(ii) The justification was that an individual insurer could demonstrate experience, expense and profit factors different from the average experience, expense and profit contemplated in the RSO's manual rate.

(b) With the promulgation of a prospective loss cost, rate deviation ceased to exist.

(i) There are no longer manual rates from which to deviate.

(ii) Once an insurer has filed to implement the RSO prospective loss cost for a given line, company deviations previously filed became null and void.

(iii) A filing of a straight percentage deviation is no longer applicable.

(c) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear, objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) Rates and supplementary information must be filed 30 days before they can be used.

(2)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(3) An insurer may file a modification to the designated rate service organization prospective loss cost in the subject

reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(4) An insurer may vary expense loads by individual classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(5) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(6) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Classification of Documents.

(1) The Department will not classify as protected, certain information in property and casualty rate filings unless these procedures are complied with.

(2) Utah Code Ann. Section 31A-19a-204 requires rates, and supplementary rate information to be open for public inspection. Supporting information in a rate filing is not designated under Utah Code Ann. Section 31A-19a-204 as public information, however, under the Government Records Access and Management Act (GRAMA)supporting information in a rate filing would be considered open for public inspection unless it is classified as private, controlled, or protected. Under GRAMA the Department may classify certain information in a record as private, controlled, or protected. It is clear that the only category applicable to rate, rule and form filings other than as a public record is as a protected record. If a record is classified as protected, the Department may not disclose the information in the record to third persons specifically and to the public generally.

(3) The only information the Department may classify as protected, absent clear documentation otherwise, in accordance with Utah Code Ann. Section 63G-2-305 is the following items:

(a) Information deemed to be trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) "Commercial Information and non-individual financial information obtained from a person which:"

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(4) The person submitting the information under either section R590-225-11(3)(a) and or (b) above and claiming that such is or should be protected has provided the governmental entity with the information in Utah Code Ann. Section 63G-2-309(1)(a)(i).

(5) The department will handle supporting information a filer submits as part of a rate filing in the following manner:

(a) The filer will need to request which specific document the filer believes qualifies under GRAMA section 63G-2-305(1) or (2) or both when the filing is submitted; and

(b) the document must include a written statement of reasons supporting the request that the information should be classified as protected.

(c) If the filer does not request the information in the document to be classified as protected, the document will be classified as public.

(d) The Department will not automatically classify any document in a filing as protected.

(e) The Department will not re-open a filing to permit a company to request protected classification of previously filed documents.

(6) Once the filing has been received, the Department will review the documents the filer has requested to be classified as protected to see if it meets the requirements of Utah Code Ann. Section 63G-2-305(1)or(2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected, and the information will not be available to the public or third parties.

(b) If all the information in the document does not meet the requirements for being classified as protected, the Department will notify the filer of the denial, the reasons therefore, and of the filer's right under GRAMA to appeal the denial. The filer will have 30 days to appeal the denial as allowed by Utah Code Ann. 63G-2-401. Despite the denial of classifying the information as protected, the Department, pursuant to GRAMA, will nonetheless treat the information as if it had been classified as protected until:

(i) the filer has notified the Department that the filer withdraws the request for designation as protected; or

(ii) the 30 day time limit for an appeal to the Commissioner has expired; or

(iii) the filer has exhausted all appeals under GRAMA and the documentation has been found to be a public document.

(c) If the filer combines in the same document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

(7) Filings submitted that show a pattern of requesting non-qualifying items as a protected document may be considered a violation of this rule. This would include putting both protected and public information in one document.

R590-225-12. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing; and

(c) Submission method, SERFF, or email; and

(d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-225-13. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents in Subsections R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-16. 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: property casualty insurance filing

December 8, 2011	**31A-2-201**
Notice of Continuation March 12, 2009	**31A-2-201.1**
	31A-2-202
	31A-19a-203

R590. Insurance, Administration.
R590-261. Health Benefit Plan Adverse Benefit Determinations.
R590-261-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-629(4) which requires the commissioner to adopt rules that establish standards for independent reviews, Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and 31A-2-212(5)(b) wherein the commissioner requires compliance with the Patient Protection and Affordable Care Act.

R590-261-2. Purpose.

The purpose of this rule is to provide a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of a final adverse benefit determination.

R590-261-3. Scope.

(1) Except as provided in Subsection (2), this rule applies to all health benefit plans as defined in 31A-1-301 except for a grandfathered health plan as defined in 45 CFR 147.140.

(2) If all grandfathered health benefit plans are administered consistently, a carrier may, for the grandfathered health benefit plans, voluntarily comply with the independent review process set forth in this rule, otherwise a grandfathered health benefit plan is subject to R590-203.

(3) A self-funded health plan may voluntarily comply with the independent review process set forth in this rule.

R590-261-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for purposes of this rule:

(1)(a) "Adverse benefit determination" means:

(i) based on the carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(A) denial of a benefit;

(B) reduction of a benefit;

(C) termination of a benefit; or

(D) failure to provide or make payment, in whole or part, for a benefit; or

(ii) rescission of coverage.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(ii) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not medically necessary or appropriate.

(2) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under Title 31A.

(3) "Claimant" means an insured or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(4) "Clinical reviewer" means a physician or other appropriate health care provider who:

(a) is an expert in the treatment of the insured's medical condition that is the subject of the review

(b) is knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition;

(c) holds an appropriate license or certification; and

(d) has no history of disciplinary actions or sanctions.

(5) "Final adverse benefit determination" means an adverse benefit determination that has been upheld by a carrier at the completion of the carrier's internal review process.

(6) "Independent review" means a process that:

(a) is a voluntary option for the resolution of a final adverse benefit determination;

(b) is conducted at the discretion of the claimant;

(c) is conducted by an independent review organization designated by the commissioner;

(d) renders an independent and impartial decision on a final adverse benefit determination; and

(e) may not require the claimant to pay a fee for requesting the independent review.

(7)(a) "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect.

(b) "Rescission" does not include a cancellation or discontinuance of coverage under a health benefit plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

R590-261-5. Adverse Benefit Determination Procedure Compliance.

An adverse benefit determination procedure shall be compliant with this rule and the requirements for adverse benefit determinations set forth in 29 CFR 2560.503-1 and 45 CFR 147.136.

R590-261-6. Notice of Right to Independent Review.

(1) With each notice of a rescission of coverage or final adverse benefit determination, the carrier shall provide written notice of the claimant's right for an independent review of the determination.

(2) The notice in Subsection (1) shall include the following, or substantially equivalent, statement:

"We have rescinded your coverage or denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by a health care professional who has no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. To receive additional information about an independent review, contact the Utah Insurance Commissioner by mail at Suite 3110 State Office Building, Salt Lake City UT 84114; by phone at 801 538-3077; or electronically at healthappeals.uid@utah.gov."

R590-261-7. Exhaustion of Internal Review Process.

The carrier's internal review process shall be exhausted prior to an independent review unless:

(1) the carrier agrees to waive the internal review process;

(2) the carrier has not complied with the requirements for the carrier's internal review process except for those failures to comply that are based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm to the claimant and are not part of a pattern or practice of violations; or

(3) the claimant has requested an expedited independent

review pursuant to Section 11 at the same time as requesting an expedited internal review.

R590-261-8. Independent Review Organizations.

(1) The commissioner shall compile and maintain a list of approved independent review organizations.

(2) To be considered for placement on the list of approved independent review organizations, an independent review organization shall:

(a) be accredited by a nationally recognized private accrediting entity;

(b) meet the requirements of this rule; and

(c) have written policies and procedures that ensure:

(i) that all reviews are conducted within the specified time frames;

(ii) the selection of qualified and impartial clinical reviewers;

(iii) the confidentiality of medical and treatment records and clinical review criteria; and

(iv) that any person employed by or under contract with the independent review organization adheres to the requirements of this rule.

(3) An applicant requesting placement on the list of approved independent review organizations shall submit for the commissioner's review:

(a) the Independent Review Organization Application form available on our website at www.insurance.utah.gov;

(b) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity; and

(c) the application fee.

(4) The commissioner shall terminate the approval of an independent review organization if the commissioner determines that the independent review organization has lost its accreditation or no longer satisfies the minimum requirements for approval.

(5)(a) An independent review organization may not own or control, or be owned or controlled by:

(i) a carrier;

(ii) a health benefit plan;

(iii) a health benefit plan's fiduciary;

(iv) an employer or sponsor of a health benefit plan;

(v) a trade association of:

(A) health benefit plans;

(B) carriers; or

(C) health care providers; or

(vi) an employee or agent of any one listed in Subsection (5)(a)(i) through (v).

(b) An independent review organization and the clinical reviewer assigned to conduct an independent review may not have a material professional, familial, or financial conflict of interest with:

(i) the carrier;

(ii) an officer, director, or management employee of the carrier;

(iii) the health benefit plan;

(iv) the plan administrator, plan fiduciaries, or plan employees;

(v) the insured or claimant;

(vi) the insured's health care provider;

(vii) the health care provider's medical group or independent practice association;

(viii) a health care facility where the service would be provided; or

(ix) the developer or manufacturer of the service that would be provided.

R590-261-9. General Independent Review Requirements.

The requirements of this section shall apply in addition to the requirements for a standard independent review, an expedited independent review and an independent review of experimental or investigational service or treatment.

(1) The carrier shall pay the cost of the independent review organization for conducting the independent review.

(2) An independent review is available to the claimant regardless of the dollar amount of the claim involved.

(3)(a) The claimant shall have 180 calendar days after the receipt of a notice of a final adverse benefit determination to file a request with the commissioner for an independent review.

(b) The claimant shall use the Independent Review Request Form available on our website at www.insurance.utah.gov, or a substantially similar form, to file the request.

(c) A request for an independent review sent to the carrier instead of the commissioner shall be forwarded to the commissioner by the carrier within one business day of receipt.

(4) The independent review decision is binding on the carrier and claimant except to the extent that other remedies are available under federal or state law.

R590-261-10. Standard Independent Review.

(1)(a) Upon receipt of a request for an independent review, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time of rescission or the health care service was requested or provided;

(ii) if a health care service is the subject of the adverse benefit determination, the health care service is a covered expense;

(iii) the claimant has exhausted the carrier's internal review process; and

(iv) the claimant has provided all the information and forms required to process an independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(2) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign on a random basis an independent review organization from the list of approved independent review organizations based on the nature of the health care service that is the subject of the review;

(b) notify the carrier of the assignment and that the carrier shall within five business days provide to the assigned independent review organization the documents and any

information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may submit additional information to the independent review organization within five business days of receipt of the commissioner's notification. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(3) Within 45 calendar days after receipt of the request for an independent review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse benefit determination to:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(4) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-11. Expedited Independent Review.

(1) An expedited independent review process shall be available if the adverse benefit determination:

(a) involves a medical condition of the insured which would seriously jeopardize the life or health of the insured or would jeopardize the insured's ability to regain maximum function;

(b) in the opinion of the insured's attending provider, would subject the insured to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse benefit determination; or

(c) concerns an admission, availability of care, continued stay or health care service for which the insured received emergency services, but has not been discharged from a facility.

(a) Upon receipt of a request for an expedited independent review, the commissioner shall immediately send a copy of the request to the carrier for an eligibility review.

(b) Immediately upon receipt of the request, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service that is the subject of the adverse benefit determination is a covered expense; and

(iii) the claimant has provided all the information and forms required to process an expedited independent review.

(c)(i) The carrier shall immediately notify the commissioner and claimant whether:

(A) the request is complete; and

(B) the request is eligible for an expedited independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for an expedited independent review notwithstanding the carrier's initial determination that the request is ineligible and shall require that the request be referred for an expedited independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall immediately:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within one business day provide to the assigned independent review organization all documents and information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within one business day submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4)(a) The independent review organization shall as soon as possible, but no later than 72 hours after receipt of the request for an expedited independent review, make a decision to uphold or reverse the adverse benefit determination and shall notify:

(i) the carrier;

(ii) the claimant; and

(iii) the commissioner.

(b) If notice of the independent review organization's decision is not in writing, the independent review organization shall provide written confirmation of its decision within 48 hours after the date of the notification of the decision.

(5) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-12. Independent Review of Experimental or Investigational Service or Treatment Adverse Benefit Determinations.

(1) A request for an independent review based on experimental or investigational service or treatment shall be submitted with certification from the insured's physician that:

(a) standard health care service or treatment has not been effective in improving the insured's condition;

(b) standard health care service or treatment is not medically appropriate for the insured; or

(c) there is no available standard health care service or treatment covered by the carrier that is more beneficial than the recommended or requested health care service or treatment.

(2)(a) Upon receipt of a request for an independent review involving experimental or investigational service or treatment, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, one business day for an expedited review, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service or treatment that is the subject of the adverse benefit determination is a covered expense except for the carrier's determination that the service or treatment is experimental or investigational for a particular medical condition and is not explicitly listed as an excluded benefit under the insured's health benefit plan;

(iii) the claimant has exhausted the carrier's internal review process unless the request is for an expedited review; and

(iv) the claimant has provided all the information and

forms required to process the independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) shall inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within five business days, one business day for an expedited review, provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within five business days, one business day for an expedited review, submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4) Within one business day after receipt of the request, the independent review organization shall select one or more clinical reviewers to conduct the review.

(5) The clinical reviewer shall provide to the independent review organization a written opinion within 20 calendar days, five calendar days for an expedited review, after being selected.

(6) The independent review organization shall make a decision based on the clinical reviewer's opinion within 20 calendar days, 48 hours for an expedited review, of receiving the opinion and shall notify:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(7) Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-13. Disclosure Requirements.

(1) Each carrier shall include a description of the independent review procedure in or attached to the policy and certificate, and may include a description with other evidence of coverage provided to the insured.

(2) The description required in Subsection (1) shall include a statement that informs the insured:

(a) of the right to file a request for an independent review of a final adverse benefit determination and include the contact information for the commissioner; and

(b) that an authorization to obtain medical records shall be required for the purpose of reaching a decision.

R590-261-14. Records.

(1) An independent review organization shall maintain a written record of each independent review for the current year plus 5 years.

(2) The records of an independent review organization shall be available for review by the commissioner upon request.

R590-261-15. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-261-16. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-261-17. 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: health benefit plan insurance
December 8, 2011 **31A-22-629**
31A-2-201
31A-2-212

R597. Judicial Performance Evaluation Commission, Administration.
R597-3. Judicial Performance Evaluations.
R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle will be as described in R597-3-1(1)(b), supra.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).

(d) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(e) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(c) The commission may select retention survey questions from among the midterm survey questions.

(d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the

judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

(f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a

judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseflow efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys
November 23, 2011 78A-12

R600. Labor Commission, Administration.
R600-3. Definitions Applicable to Construction Licensees.
R600-3-1. Authority and Scope.

A. The Commission enacts this rule pursuant to authority granted by 34-28-2(2), 34A-2-103(8)9c), 34A-5-102(2) and 34A-6-103(2).

B. This rule defines terms and establishes procedures by which an unincorporated entity that is a construction licensee may rebut its status as an employer for purposes of Title 34, Chapter 28, Payment of Wages; Title 34A, Chapter 2, Workers' Compensation Act; Title 34A, Chapter 5, Utah Antidiscrimination Act; and Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

R600-3-2. Definitions.

A. An "active manager" is one who directs or causes the direction of the management and policies of the unincorporated entity, whether through the ownership of voting shares, by contract, or otherwise. Status as an active manager requires a documented history of voting on, approving, or otherwise deciding a substantial matter involving the business of the unincorporated entity, including without limitation:

1. Authorizing a member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business or business of the kind carried on by the company;

2. Making a distribution to members;

3. Resolving a dispute connected with the company's business;

4. Making a substantial change in the business purpose of the unincorporated entity;

5. Authorizing the unincorporated entity to acquire or merge with another entity; or

6. Authorizing a sale, lease, exchange or other disposition of a substantial asset of the unincorporated entity, other than in the usual and regular course of the business.

B. "Directly holds at least an 8% ownership interest" means that the individual owns in his or her individual capacity at least 8% of the stock, capital, or equity of the unincorporated entity, or is entitled to at least 8% of the unincorporated entity's profits. C. "Indirectly holds at least an 8% ownership interest" means that the individual's total aggregate ownership interest from all sources, including a corporation, partnership, estate, trust or some other form of beneficial interest, totals at least 8% of the unincorporated entity's stock, capital, equity, or profits.

1. For example, if an individual owns 50% of company A which in turns owns 20% of the subject unincorporated entity, then the individual holds a 10% indirect ownership interest in the unincorporated entity.

D. "Subject to supervision or control in the performance of work" means that:

1. The unincorporated entity has the right to control what the worker does and how he or she does it, regardless of whether the unincorporated entity actually exercises that authority; or

2. The unincorporated entity has the right to control the business aspects of the work, such as:

a. How the worker is paid;

b. Whether expenses are reimbursed;

c. Who is responsible to provide tools and supplies;

d. Who arranges for administrative support, advertising, and similar functions.

R600-3-3. Procedures to Challenge Presumption that Unincorporated Entity is the Employer.

A. Declaratory Actions. An interested party may request a determination regarding an unincorporated entity's status as an employer by filing a petition for declaratory order in accordance with Rule R600-1.

B. In Connection with Other Adjudicative Proceedings.

1. In proceedings to adjudicate a claim of unpaid wages, employment discrimination, or violation of occupational safety and health standards, an unincorporated entity may submit evidence that rebuts the presumption that the unincorporated entity is an employer,

2. Notwithstanding the burden of proof required to prove the underlying claim, the unincorporated entity may only rebut the presumption that it is the employer by clear and convincing evidence.

KEY: labor commission, unincorporated entity, construction licensees
December 8, 2011 34A-1-104

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use

the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who

fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $125 per half hour for medical panel members and $137.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after October 1, 2011.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $17,125.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $24,706;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $30,321.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

KEY: workers' compensation, administrative procedures, hearings, settlements

December 29, 2011	**34A-1-301 et seq.**
Notice of Continuation August 15, 2007	**63G-4-102 et seq.**

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-1. Authority.

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 2012, as established by the Labor Commission, shall be:

1. 0.05% for the Uninsured Employers' Fund;
2. 3.0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
January 1, 2012 59-9-101(2)
Notice of Continuation December 8, 2010

R651. Natural Resources, Parks and Recreation.
R651-209. Anchored and Beached Vessels.
R651-209-1. Anchored Vessels.

Unless permitted to do so by the local managing agency:

(1) an anchored vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be anchored for more than 72 hours in one location.

(3) a vessel anchored for 72 hours that wishes to continue anchorage on a waterbody must move at least two miles away from the last position of anchorage.

R651-209-2. Beached Vessels.

Unless permitted to do so by the local managing agency:

(1)a beached vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be beached for more than 72 hours in one location.

(3) a vessel beached for 72 hours that wishes to continue to beach on a waterbody must move at least two miles away from the last position of being beached.

KEY: boating, anchored vessels, beached vessels
December 9, 2011 73-18-4(1)(e)

R651. Natural Resources, Parks and Recreation.
R651-637. 2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt.
R651-637-1. Authorization of a Hunt.

(1) A hunt for mule deer and bighorn sheep on Antelope Island State Park is authorized for the fall of 2012. Access on Antelope Island State Park is authorized for the purpose of hunting mule deer and bighorn sheep in the fall of 2012.

(2) All hunting shall be confined to the designated hunting unit which consists of that portion of approximately 26,000 acres on Antelope Island lying south of the chain link fence, commonly known as the "2000 acre fence" beginning in Farmington Bay and running in a south southwesterly direction and ending at White Rock Bay.

R651-637-2. Applicability of Law and Rules.

Hunting during the 2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted in accordance with applicable state law, administrative code, hunting guidebooks of the Utah Wildlife Board, and in accordance with this rule.

R651-637-3. Season Dates.

The 2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted during legal hunting hours as follows:

(1) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the competitive bid process may hunt during legal hours beginning 30 minutes before official sunrise on November 12 2012 and ending 30 minutes after official sunset on November 21, 2012.

(2) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the public draw process may hunt during legal hours beginning 30 minutes before official sunrise on November 15, 2012 and ending 30 minutes after official sunset on November 21, 2012.

R651-637-4. Hunting Party Size.

Each hunter licensed to hunt during the 2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt may be accompanied by up to four (4) non-hunting companions. Guides, photographers, packers and all other individuals accompanying the hunter in camp or in the field are included in this limit.

R651-637-5. Fees.

(1) Day use fees for licensed hunters and their companions will be waived for the duration of their hunt.

(2) Camping fees for hunters and their companions who desire to camp on Antelope Island during the hunt will be charged per the current fee schedule. All campers shall camp in designated areas as directed by park management.

R651-637-6. Access.

(1) Motor vehicle access will be limited to publicly accessible roads. No off-road, motorized vehicular travel will be allowed.

(2) Off-highway vehicles as defined in Title 41-22-2 UCA are not allowed on Antelope Island.

(3) During the hunt, foot and horse travel, including cross-country foot and horse travel, will be allowed in all areas of the hunting unit.

(4) Foot and horse travel including cross-country foot and horse travel for the purposes of pre-season scouting is authorized for hunters and their guides. Hunters and guides conducting pre-season scouting shall notify Park Management of their presence on the Island, and shall adhere to instructions provided by Park Management. Standard day use and camping fees shall apply to pre-season scouting visits.

R651-637-7. Mandatory Orientation.

A mandatory orientation will be held prior to the hunt at the Antelope Island State Park Visitor Center. All license holders and their guides shall be in attendance at this orientation session.

R651-637-8. Mandatory Check-in and Check-out.

All hunters and their companions shall check in with Park Management at the beginning of their hunt and shall check out at the end of their hunt. In addition, any hunter or companion leaving or returning to Antelope Island during the course of the hunt shall check in or check out with Park Management. Instructions on checking in and out will be provided at the mandatory orientation.

R651-637-9. Handling of Harvested Wildlife.

The carcasses of all harvested wildlife shall be covered while being transported on Antelope Island or on the Antelope Island Causeway. This includes all parts of the harvested wildlife, including the head.

KEY: parks, hunting
December 9, 2011 79-4-304

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22, which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Falconiformes (i.e., vultures, kites, eagles, hawks, caracaras, and falcons) and all avian species in the Order Strigiformes such as owls and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor.

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to indoor facilities where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of

sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Falconiformes or the Order Strigiformes and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), Rock Dove/feral pigeon (Columba livia). pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least 14 years of age.

R657-20-4. Falconry COR, Permits, and Licenses.

(1) The division may deny issuing a COR or permit to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

(a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah. A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

R657-20-5. Application for a Resident or Nonresident Falconry COR.

(1) Resident Applications

(a) A resident applying for or renewing a falconry COR shall:

(i) Submit a completed falconry application to the Division; and

(ii) Include the appropriate COR fee.

(b) At the time of renewal, the current falconry COR number must be included on the falconry COR renewal application.

(c) A falconer claiming residency in Utah may not claim residency in, or possess a resident falconry license or falconry permit from, another state.

(2) Nonresident Applications

(a) A six-month domicile period is required for a nonresident falconer entering Utah to establish residency.

(b) A nonresident falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah during the six-month domicile period while establishing residency.

(i) If the raptors are to be flown or exercised during the six-month domicile period, the following permits must be in possession:

(A) a valid falconry license from the previous state; and

(B) a valid federal falconry permit when required under federal law.

(ii) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(c) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of each raptor held in possession, and an import authorization number

obtained from the Utah Department of Agriculture must be presented to the Division within 5 business days after entering Utah.

(d) A non-resident falconer establishing residency must maintain proper facilities and equipment.

(i) A facilities inspection is required and must be requested from the Division by the non-resident falconer no later than 120 days of establishing domicile in the state.

(A) Requests may be made in writing or via email at falconry@utah.gov.

(ii) A facilities inspection will be completed by the Division within 30 business days of the date the request for an inspection is received.

(iii) A non-resident falconer establishing residency may temporarily house raptors prior to their initial facilities inspection (see Section R657-20-20).

(e) At the conclusion of the six-month domicile period, a new resident applying for a falconry COR must submit the following to the Division:

(i) A completed falconry application indicating class designation;

(ii) A copy of a valid falconry license from the former state of residency indicating class designation;

(iii) A valid federal falconry permit number, if applicable;

(iv) Proof that the applicant has passed the falconry test administered by the state, tribe, or territory where legal residence was maintained, or proof that the applicant previously held a falconry permit at the class level being requested; or:

(A) Correctly answer at least 80 percent of the questions on an examination administered by the Division.

(B) If the applicant passes the examination, the Division will decide which level of falconry permit to be issued, consistent with the class requirements outlined in Sections R657-20-16, R657-20-17, and R657-20-18 of this rule; and

(v) Submit the appropriate COR fee.

(f) A non-resident falconer entering Utah to establish residency that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

(g) At the conclusion of the six-month domicile period outlined in Section R657-20-5, a falconer may apply for a resident Utah falconry COR.

R657-20-6. COR Renewal and Annual Report Forms.

(1) Resident falconers wishing to renew a valid falconry COR must submit a completed falconry COR renewal form to the Division upon or before the expiration date specified on the current falconry COR.

(a) falconry COR Renewals require up to a 30-day processing time for completion.

(2) All Resident falconers holding a valid falconry COR must submit a completed falconry Annual Report to the Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual summary report of their falconry activities that are on file.

(b) Each resident falconer must verify the annual summary report for accuracy and return the report to the Division by the following January 31.

(3) Residents who do not hold a valid falconry COR or do not submit a COR renewal form by the date their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3.

(4) Failure to submit required records and timely, accurate, or valid reports may result in administrative action by the Division.

(a) Administrative action that may be taken by the Division include:

(i) Issuance of a probationary COR with restrictions on activities allowed; or

(ii) Non-renewal of a COR until the required records and reports are completed.

(5) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(a) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(b) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(6) A falconer who has allowed their COR to lapse may apply for a new COR.

(a) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4(1).

(b) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-16(1)(b)(ii).

(i) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(ii) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-8, R657-20-9, and R657-20-10.

R657-20-7. Nonresident Participation in Meets or Trials.

(1) A nonresident entering Utah to participate in the sport of falconry at an organized meet must be 14 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(2) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the Division.

(3) A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(4) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(5) A nonresident participating in an organized meet for more than five consecutive calendar days must obtain appropriate nonresident licenses, permits, tags, and stamps as provided in the proclamations of the Wildlife Board if protected wildlife is pursued.

(6) A nonresident participating in an organized meet for more than five consecutive calendar days must provide a health certificate and an import authorization number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

(7) A falconry meet license is not required for participation in a falconry trial.

(8) An organizer of a falconry meet must obtain prior approval from the Wildlife Board for non-residents to purchase a 5-day non-resident meet license.

(a) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the Division.

R657-20-8. Care and Facilities Requirements.

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house

and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(4) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(5) The Division should complete an inspection of falconry facilities within 30 business days of receiving a request for inspection.

(a) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(b) Requests for inspections may be made verbally or in writing or via email.

(6) Facilities Requirements.

(a) Facilities must be adequate to house the number of raptors in possession.

(b) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(i) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-8(6)(d)(viii).

(ii) A new facilities inspection may be required when a permittee increases the number of raptors in their possession.

(c) The Utah falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(d) The Mews.

(i) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(ii) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(iii) Untethered raptors may be housed together in the mews if they are compatible with each other.

(iv) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(v) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(vi) If raptors housed in an indoor mews that is not a place of residence are untethered, the mews must be fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the mews.

(vii) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(viii) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(A) A raptor may be untethered inside a place of residence when being handled.

(B) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(C) A raptor may be housed untethered inside a flight chamber constructed within a place of residence, provided the chamber has a source of light and is fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the chamber.

(e) Weathering Area

(i) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(ii) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(iii) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(iv) Raptors must be tethered while inside the weathering area.

(v) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(vi) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall to the perch will not cause injury to the raptor or feather damage.

(vii) Each raptor should have a pan of clean water available.

(A) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(viii) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(ix) falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(f) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(g) Any falconer who possesses a raptor and moves or changes the address of where the raptor is held must notify the Division in writing of the change of address within 5 business days.

(i) An inspection of facilities may be required at the new location.

(h) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

(i) A raptor may be housed in temporary facilities for no more than 120 consecutive calendar days, provided the temporary facilities has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

R657-20-9. Equipment.

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material, or the materials and equipment to make them, or the material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(b) At least one flexible, weather-resistant leash.

(c) At least one swivel of acceptable falconry design.

(d) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(e) At least one perch of an acceptable design will be provided for use for each raptor.

(f) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(g) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

R657-20-10. Inspection of Raptors, Facilities, CORs, and Documents.

(1) A facilities inspection is required prior to initial issuance of a falconry COR and may be requested by the falconer in writing or by email at falconry@utah.gov. Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(2) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(3) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

R657-20-11. Take of Wild Raptors.

(1) A licensed falconer may take from the wild any raptor species of the Order Falconiformes or Strigiformes only as provided in this rule

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptors taken from the wild for falconry is a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A raptor taken from the wild for falconry must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the date of capture.

(2) Resident Take of Wild Raptors

(a) A Utah Resident may not take any raptor from the wild without first obtaining a COR and a Raptor Capture Permit from the Division.

(b) A Raptor Capture Permit is valid for one raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(c) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-21(2) and (3) as long as the permit holder is present.

(d) Raptor Capture Permits are valid only for the season specified on the permit.

(e) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a raptor.

(f) Raptors may not be taken at any time or in any manner that violates any State, federal, tribal, or local law.

(g) While trapping, falconers shall not retain and transport more than one captured raptor per capture permit.

(3) Taking of wild raptors is prohibited within the boundaries of all National Parks in Utah and on all Utah State Parks.

(4) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(5) No more than two 2 raptors may be taken from the wild each calendar year to use in falconry.

(6) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred raptor will not count as a capture by the recipient.

(c) The transferred raptor will always be considered a wild bird.

(7) A permittee may not intentionally capture raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a raptor he or she is not allowed to possess, it must be released immediately.

(8) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17 subpart C, and if a federal endangered species permit is obtained before taking the bird.

(9) A General or Master Class falconers may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(10) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(11) Periods for Allowable Take Of Raptors From the Wild

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1 through December 31.

(i) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) A peregrine falcon banded with a Federal Bird Banding Laboratory aluminum band may not be taken from the wild and retained.

(iv) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(v) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(d) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(i) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(e) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(i) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(ii) Recapture of falconry raptors must be reported to the Division no more than 5 business days from the date of recapture.

(iii) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(A) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(B) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

(12) Special provisions for take of peregrine falcons.

(a) Only General and Master Class falconers only may take eyas or passage age peregrine falcons in accordance with Sections R657-20-11 and R657-20-12 and as provided in this rule.

(i) Application procedures for taking eyas or passage Peregrine Falcons are provided in Section R657-20-12 and R657-20-13.

(ii) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(iii) The number of permits issued to take peregrine falcons will be set by the Division annually.

(A) One non-resident take permit will be issued annually. If that permit is not applied for, it will be made available to resident falconers.

(B) Any remaining permits that are not applied for will be made available to resident and nonresident falconers on a first-come first-served basis.

(iv) Issued permits will allow take of one eyas or passage age Peregrine Falcon.

(b) An eyas peregrine falcon may not be removed from its aerie prior to 10 days of age.

(c) Aeries of peregrine falcon may not be entered when young are 28 days or more of age.

(d) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(e) A peregrine falcon that is marked with a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(13) Special provisions for take of golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-18(2)(c)(i).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands;

(14) Acquiring a bird for falconry from a permitted rehabilitator.

(a) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A raptor acquired for falconry from a rehabilitator must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the transaction.

(ii) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-12. Nonresident Take of Wild Raptors.

(1) A Nonresident may not take any raptor from the wild

without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(c) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(d) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

R657-20-13. Application Procedures and Drawings for Capture of Peregrine Falcons, Sensitive Raptors, and Raptors Available to Nonresident Falconers.

(1) Applications for Raptor Capture Permits must be made for:

(a) Peregrine falcons;

(b) Sensitive raptor species for which take is limited by the falconry Program Coordinator pursuant to Section R657-20-11, and

(c) Raptors designated for non-resident take.

(2) If necessary, a drawing will be held for those species that have more applicants than available permits.

(3) An individual may only draw once every 2 years for a Raptor Capture Permit to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(a) In the event that unclaimed permits remain after a drawing, then the 2 year restriction is waived.

(4) If the number of applications received exceeds the number of available permits, then the Division will conduct a drawing to determine which applicants receive a permit.

(a) Any remaining permits that are not applied for will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis.

(5) Application forms for Raptor Capture Permits are provided by the Division.

(6) An applicant for a Raptor Capture Permit must submit a complete and accurate application to include the following:

(a) A copy of the applicant's valid Utah falconry COR, or valid license from their state of residency indicating the falconry class designation;

(b) A copy of the applicant's valid federal permit, when required by federal law; and

(c) A non-refundable application fee.

(7) Applications for taking raptors must be received by the Division through the mail, or by email, no later than close of business on the last business day of March each year.

R657-20-14. Importation Requirements for Residents and Nonresidents.

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) a certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) an import authorization number issued through the Utah Department of Agriculture, Animal Health Office.

(2) Any raptor brought into the state on a permanent basis must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of importation.

(3) A raptor imported into the state for falconry or any other purpose have an import permit and certificate of veterinary inspection issued by the Utah Department of Agriculture and Food pursuant to R58-1-4.

R657-20-15. Flying a Hybrid Raptor in Falconry.

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

R657-20-16. Apprentice Class Falconer and Sponsors.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 14 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 14th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-8, R657-20-9, and R657-20-10 before a falconry COR can be issued.

(2)(a) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(i) Husbandry and training of raptors held for falconry;

(ii) Relevant wildlife laws and regulations, and

(iii) Determining what species of raptor is appropriate for the Apprentice to possess.

(b) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(c) A sponsor must be:

(i). a Master Class Falconer who holds a valid Utah falconry COR or tribal falconry permit;

(ii) a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR or tribal falconry permit

(d) Unless approved by the Division in writing, the sponsor cannot reside

(i) greater than a 100 mile distance from the Apprentice; or

(ii) outside of Utah.

(e) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

(i) Apprentice Class falconers that change sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements in R657-20-16(2)(a) through (d).

(3) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess any wild-caught passage age raptor or captive-bred raptor species of

the Order Falconiformes or Strigiformes for falconry, with the following exceptions:

(i) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles, or federally listed threatened or endangered species, or Utah state Sensitive Species, or any species listed as a national Species of Conservation Concern in the most recent list of "Birds of Conservation Concern" from the federal Division of Migratory Bird Management to include wild, captive-bred, or hybrid individuals of any restricted species, with the following exceptions:

(1) Notwithstanding Subsection (3)(a)(i), an Apprentice Class falconer may take or possess raptors specified in the falconry guide book

(2) An Apprentice Class falconer may possess a hybrid raptor provided that the hybrid raptor is not the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act).

(b) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(c) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(d) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-11(6) and R657-20-21.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-17. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor, captive-bred, or hybrid raptor species of the Order Falconiformes or Strigiformes except eagles.

(b) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-18. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Falconiformes or Strigiformes except a bald eagle (Haliaeetus leucocephalus).

(i) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(c) below are met.

(b) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, but they must be trained in the pursuit of wild game and used for hunting.

(c) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

(ii) A Master Class falconer that satisfies the requirements of this rule may be authorized to take or possess no more than 3 eagles as part of the 5-wild bird maximum limitation for the Master Class level.

R657-20-19. Unintentional Kill of a Prey Item by a Falconry Raptor.

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 5 business days of the take event.

(3) Unintentional take of any state Sensitive Species must be reported to the Division within 5 business days of the take event.

R657-20-20. Temporary Care of Falconry Raptors.

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division indefinitely in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division indefinitely in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconers caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 90 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

R657-20-21. Reporting Requirements for Acquisition of Raptors.

(1) Take of any raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email to falconry@utah.gov, no later than 10 business days after capture of the raptor.

(2) A permittee may receive assistance from another individual in capturing a raptor, but the permittee must be present at the capture site

(a) Regardless of the assistance of another person in capturing a raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(3) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(a) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(b) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(c) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(d) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(4) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(a) Any transfer or exchange for a raptor must be reported to the Division within 10 business days either by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email to falconry@utah.gov.

(b) A permittee may not purchase, sell, trade, or barter a wild raptor.

(i) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(c) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(5) Anytime a permittee acquires, transfers, rebands, or microchips a raptor; or a raptor in their possession is stolen; or is lost to the wild and is not recovered within 30 days; or dies; the occurrence must be reported to the Division within 10 days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A to the Division or FWS pdf i-381A via email to falconry@utah.gov.

(6) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(7) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(8) On an annual basis, the falconry Program Coordinator shall determine the number of capture permits issued for the taking of eyas raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the number of eyas capture permits available for sensitive raptors shall be available by February 1 of each year.

(b) Application procedures for taking sensitive raptor species are provided in Section R657-20-11.

R657-20-22. Banding or Tagging Raptors Used in Falconry.

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (Parabuteo unicinctus), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, numbered U. S. Fish and

Wildlife Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Take or acquisition of any wild raptor must be reported to the Division by either entering the required information including, when required, the band number or microchip information in the electronic database at http://permits.fws.gov/186A, or by submitting a paper form 3-186A or FWS pdf i-381A via email no later than 10 business days after capture or acquisition of the raptor.

(3) Raptors bred in captivity must be banded with a U. S. Fish and Wildlife Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered U. S. Fish and Wildlife Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division by either entering the required information including the band number and microchip information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after banding the raptor.

(4) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division within 5 business days and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division.

(5) A band may not be altered, defaced, or counterfeited.

(6) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i). Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

(7) A raptor removed from the wild may not be banded with a with a U. S. Fish and Wildlife Service seamless metal band or plastic, numbered U. S. Fish and Wildlife Service yellow band.

R657-20-23. Raptors Injured Due to Falconer Trapping Efforts.

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) Take of the injured raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after capture of the raptor.

(i). The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(ii) The injured raptor will count against the permittee's possession limit.

(b) An injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(i) the injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

R657-20-24. Releasing a Falconry Raptor to the Wild.

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

R657-20-25. Hacking of Falconry Raptors and other Training Techniques.

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the U. S. Fish and Wildlife Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

R657-20-26. Use of Pen-Reared Game Birds for Meets, Trials and Training.

(1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.

(3) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (c).

(a) Aluminum leg bands may be purchased at any Division office.

(b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and

(b) Only during the approved dates of the meet.

(6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

R657-20-27. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife.

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the U. S. Fish and Wildlife Service or the Division.

R657-20-28. Permission to Conduct Falconry Activities on Public or Private Lands.

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization from the affected Indian tribe.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah.

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

R657-20-29. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary flight feathers or rectrices from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as

long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

R657-20-30. Other Uses of Raptors.

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(i). Transfer must be reported to the Division within 10 business days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a standard paper form 3-186A, or FWS pdf i-381A via email.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i). The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) promoting or endorsing any business, company, corporation, or other organization; or

(iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-8, R657-20-9, and R657-20-10 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession of a Special Purpose Abatement permit issued by the U.S. Fish and Wildlife Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct

abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the U.S. Fish and Wildlife Service.

KEY: wildlife, birds, falconry*
February 22, 2010 23-17-7
Notice of Continuation December 12, 2011 50 CFR 21

R690. Public Education Job Enhancement Program, Job Enhancement Committee.
R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.
R690-100-1. Definitions.

A. "Advancement Award/scholarship recipient" means a scholarship to an educator qualified under Sections 53A-1a-601 (1) and (2) (a) and (b). The scholarship may be used for:

(1) training in subject areas designated in Section 53A-1a-601(1); and

(2) tuition costs only as designated in Section 53A-1a-601(2)(b) for a master's degree, teaching endorsement, or approved graduate program including National Board Certification.

B. "Contract" means a binding agreement signed and agreed to by the recipient, the PEJEP Committee and USOE under 53A-1a-602(3)(c); applications are available through the USOE and online through the USOE website at www.schools.utah.gov.

C. "Critical areas of educator need" means secondary school teachers with expertise in mathematics, physics, chemistry, physical science, learning technology, or information technology PreK-12 special education teachers, educators seeking math endorsements in fourth, fifth, and sixth grade with a Level 1 or Level 2 license with an elementary or secondary area of concentration, and occupational therapists.

D. "Information technology" for purposes of this rule means courses in information support and services, interactive media, network systems and programming, and software development as listed under information technology education in career and technical education (CTE) on the USOE website.

E. "Learning technology" for the purpose of this rule means a degree/endorsement earned to implement use of technology in classrooms by secondary school teachers in the critical areas of educator need identified under R690-100-1C.

F. "Letter of authorization" under Section 53A-la-601(3) means a designation given to an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements for the course(s) he teaches, who is employed by a school district, who has an educator license under R277-502.

G. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

H. "Opportunity Award/signing bonus/cash award recipient" means a cash award paid in two installments to qualified educators under 53A-1a-601(2) (c) and (3)(a) and (b).

I. "Public Education Job Enhancement Program Committee (PEJEP Committee)" means the committee designated under Section 53A-la-602.

J. "Public Education Job Enhancement Program (PEJEP)" means a program authorized under Section 53A-la-601.

K. "Public Education Job Enhancement Program Executive Committee (PEJEP Executive Committee)" means a subcommittee of approximately five members of the PEJEP Committee including the PEJEP Chair and others as selected by the PEJEP Committee provided for in Section 53A-1a-602.

L. "Special education teacher" means an educator who teaches at least three classes (or fifty percent of the school day) of primarily PreK-12 special education students or whose contract assignment is designated by the district as SPECIAL EDUCATION. Special education teacher may also mean speech and language pathologists and psychologists and special education educators teaching grade 12+ in a high school.

M. "Technology training" for the purpose of this rule means professional development training to public school superintendents, administrators, and principals in the effective use of technology in public schools.

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

R690-100-2. Authority and Purpose for Opportunity and Advancement Awards.

A. The rule is authorized under Section 53A-la-602(5) which requires the PEJEP Committee to make a rule establishing policies and procedures for:

(1) designating the recipients and offering scholarships and cash awards from PEJEP funding;

(2) timelines for the submission and approval of applications;

(3) the distribution of the awards and scholarships; and

(4) monitoring educator progress and compliance with the law and this rule.

B. The purpose of this rule is to provide policies and procedures for participation in the Public Education Job Enhancement Program.

R690-100-3. PEJEP Committee and Committee Expansion.

A. The PEJEP Committee identified in Section 53A-1a-602 may create subcommittees, including a PEJEP Executive Committee to increase the PEJEP Committee's effectiveness.

(1) The PEJEP Executive Committee shall be designated by the PEJEP Committee.

(2) All subcommittee recommendations shall be affirmed by the PEJEP Committee.

(3) Subcommittee membership and terms shall be determined by the PEJEP Committee.

B. The PEJEP Committee may add advisory committee members to inform the PEJEP Committee's decisions. Advisory committee members may meet regularly with the PEJEP Committee but may not vote or approve applicants for awards.

C.(1) The Committee may hold electronic meetings consistent with Section 52-4-207.

(2) Committee members may participate through electronic means if at least three Committee members are present at an established anchor location for the meeting.

(3) A quorum may be established that includes members participating electronically.

(4) Committee members participating through electronic means may officially vote on motions.

R690-100-4. Opportunity Awards.

A. Timelines for Opportunity Awards

(1) The PEJEP Committee shall provide to all public school district superintendents and charter schools, by May 14 of each year, teacher information forms and funds available for Opportunity Awards consistent with critical areas of educator need identified under R690-100-1C.

(2) Information forms for awards shall also be available from the USOE and on-line through the USOE website.

(3) Completed information forms for Opportunity Awards, including required documentation, shall be due to the USOE from applying school districts and charter schools by November 1 annually.

(4) Recipients of Opportunity Awards shall receive the cash award in two installments, with the first initial payment at the beginning of the four year teaching commitment and the second installment at the conclusion of four consecutive years of teaching.

(a) The recipient shall repay a portion of the initial payment if the recipient fails to complete two years of the consecutive four year teaching commitment unless waived for good cause by the PEJEP Committee, designated in Section 53A-1a-602; and

(b) The recipient shall not receive the second installment if the recipient fails to complete the consecutive four year

teaching commitment.

(5) The USOE shall receive documentation annually by October 1 from recipients of Opportunity Awards documenting a full-time schedule as educators during the previous school year.

(6) If the recipient desires to decrease his teaching employment to less than full-time, teach less than 50 percent of the teacher's course load in the area of the award, or take a leave of absence at any time, the recipient shall submit a formal written request to the PEJEP Committee. The PEJEP Committee may grant or deny permission for the employment change within 30 days of the request; if permission is denied by the PEJEP Committee, provisions under 53A-1a-601(1)(c)(ii) shall apply immediately.

(7) The USOE shall be immediately notified by the Opportunity Award recipient if the recipient changes employers, leaves public education, or moves from the state; provisions of 53A-1a-601(1)(c)(ii) shall apply immediately if the recipient leaves public education or leaves the state.

(8) Opportunity Award recipients shall notify the USOE at the conclusion of the recipient's consecutive four year teaching commitment.

(9) The USOE shall make the final Opportunity Award payment in a timely manner upon notification by the recipient and documentation of full-time employment during the required four year period.

B. Award and Funding Requirements for Opportunity Awards

(1) To be eligible to receive an award under this rule, an educator shall:

(a) have signed an employment contract with a public school district or charter school;

(b) be recommended by secondary school principal, school district superintendent or designee or charter school director;

(c) be a fully licensed educator in Utah or enrolled in an alternative educator licensing program in:

(i) pre-K-12+ special education; or

(ii) a secondary education endorsement program (grades 7-12) in critical areas of educator need identified under R690-100-1C; and

(d) have taught under a letter of authorization for at least one year in the areas referred to under Section 53A-1a-601(1) and received a superior evaluation as a classroom teacher.

(2) Licensed teachers newly hired in a school district or charter school providing instruction to students in any public classroom setting shall be eligible for an Opportunity Award.

C. School district/charter school responsibilities:

(1) An employing school district/charter school shall notify the USOE if a recipient of an Opportunity Award ends school district employment.

(2) An employing school district/award recipient shall notify the USOE if an Opportunity Award recipient has his teaching assignment changed to less than 50 percent of his assignment in the area that qualified the teacher for the award.

(3) An employing school district shall notify the USOE of any other award or scholarship or special compensation that an award recipient is receiving, to the best of the employer's information, from another source.

R690-100-5. Advancement Awards.

A. Timelines for Advancement Awards

(1) Applications for Advancement Awards shall be available from the USOE and online through the USOE website.

(2) Educators may apply at any time throughout the year and may receive an award subject to funds available.

(3) Beginning in June 2008, upon receipt of the Advancement Award and each semester that recipient receives the Advancement Award, recipient shall provide documentation to the USOE that the recipient is enrolled in approved higher education course(s).

(4) Recipients have four years to complete course work for a master's degree, teaching endorsement, or approved graduate program.

(5) Upon completion of the master's degree, teaching endorsement, or approved graduate program, a recipient shall notify the USOE and provide an official higher education transcript or appropriate documentation.

(6) Recipients of the Advancement Awards shall notify the USOE immediately if they change public education employers, drop their class loads below 3 credit hours or move from the state.

(7) If the recipient interrupts employment for any reason, the recipient shall submit a formal written letter to the PEJEP Committee explaining the reason for the interruption and requesting a continuance of the contract.

B. Award and Funding Requirements for Advancement Awards

To be eligible to receive an award under this rule, an educator shall:

(1) be approved by the employing principal and the school district superintendent or designee or a charter school director and charter school board chair;

(2) be a fully licensed Utah educator or enrolled in a Utah alternative educator licensing program.

(3) agree to enroll in eligible schools or programs at the first possible enrollment opportunity following the award;

(4) use the award only at a Utah public or private accredited higher education institution; exceptions may be made by the PEJEP Committee on a case by case basis for compelling circumstances;

(5) provide documentation to the PEJEP Committee of acceptance into an approved graduate program, including National Board Certification, leading to a master's degree or teaching endorsement in areas identified under R690-100-1C;

(6) not use the award to pay for course work in counseling or administration.

C. Additional Recipient Requirements for Advancement Awards; a recipient shall:

(1) complete the program within four years from the date of initial enrollment.

(2) complete endorsement classes in a timely manner as approved in the contract with the PEJEP Committee.

(3) successfully complete (2.0 average or better) all classes for which recipient is reimbursed.

(4) enroll and seek reimbursement only for courses leading directly to a master's degree, teaching endorsement, or approved graduate program, for which the award was made.

(5) show evidence of progress toward master's degree, teaching endorsement, or approved graduate program, every semester for which the award is used.

(6) commit to teach in Utah public schools in an area identified in 53A-1a-601(1) for a period of four consecutive school years following the completion of the endorsement or degree for which the award was made.

(7) notify the USOE if a recipient of an Advancement Award ends school district employment.

(8) notify the USOE if an Advancement Award recipient has his teaching assignment changed to less than 50 percent of his assignment in the area that qualified the teacher for the award.

(9) notify the USOE of any other award or scholarship or special compensation that an award recipient is receiving, to the best of the employer's information, from another source.

(10) be eligible for an Advancement Award if the recipient provides instruction to students in any public school setting, including secure facilities with education components under the control and supervision of the public school system.

D. Award Priorities for Advancement Awards

(1) Superintendent/principal recommendations

(2) Existing formal qualifications, evaluations, degrees, certificates, endorsements, licenses of educators in district/school.

(3) Applicants' discussions of career plans, educational objectives, and estimated time periods for completion of course work.

(4) Alignment of applicant career/educational objectives with intent and express purposes of Section 53A-1a-601.

R690-100-6. Enforcement and Penalty Provisions for Breach of PEJEP Contract for Opportunity and Advancement Awards.

A. It is the responsibility of award recipients to notify in writing both the USOE and employing school district, during the period of the award, of changes in recipient's name, mailing address, telephone number, or licensing status.

B. If an Opportunity Award or Advancement Award recipient fails to satisfy the teaching commitment, earn the master's degree, or teaching endorsement, or complete the approved graduate program, the recipient may be responsible to repay, as determined by the PEJEP Committee, the full or a prorated amount of the cash award or scholarship fund received.

C. The entire amount of the cash award or scholarship may become due and payable immediately, including interest following review by the PEJEP Committee for violations of Section 53A-1a-601 or this rule.

D. The recipient may be responsible for any and all necessary collection costs.

E. Legal action may be taken against recipient as recommended by the PEJEP Committee and approved by the USOE and the Utah Attorney General's Office.

F. A recipient may be referred to the Utah Professional Practices Advisory Committee for possible action against the recipient's license for willful violations of law or this rule.

G. Should recipient's license be suspended or revoked by the Utah State Board of Education, consistent with due process provided for in state law, the award or scholarship shall be canceled at the time of license revocation and subject to the conditions stated in R690-100-5.

H. Exceptions to any provision of the Opportunity or Advancement Award contracts shall be approved in writing by the PEJEP Committee.

R690-100-7. Miscellaneous Provisions or Requirements for the Opportunity and Advancement Awards.

A. In any given school year, a teacher shall not receive both an Opportunity Award and an Advancement Award and shall not receive two Opportunity awards concurrently.

B. Recipients of the Opportunity Award and Advancement Award may not apply for a second award until the consecutive four year teaching commitment has been fulfilled.

C. Opportunity and Advancement award educators may take less than a full-time course load in the areas identified in 53A-1a-601(1), if student demand is not sufficient for a full-time assignment in those subject areas.

D. If the Opportunity or Advancement Award recipient should die before the conditions or repayment of the award is satisfied, the entire commitment or balance shall be waived.

E. The educator shall be teaching in the critical areas of educator need identified under R690-100-1C,D,and E, to apply for a PEJEP scholarship toward any learning technology degree, endorsement, or advanced degree.

F. Advancement Award Recipients taking 9 credit hours during summer months (forgoing employment during that time) may receive a $6,000 summer stipend, at the discretion of the PEJEP Committee; summer stipends shall be prorated for educators in regulated programs and those recipients may receive $2,000 per 3 credit hours, up to $6,000.

G. Endorsement program recipients may receive only one summer stipend of $6,000 per 9 credit hours at the discretion of the PEJEP Committee.

H. Endorsement caps shall be commensurate with increased tuition costs for the specific endorsement; and

I. Teachers who have their assignment changed which takes them out of their classroom teaching in the PEJEP content areas, must submit a petition to the PEJEP Committee for potential waiver of penalties associated with the change.

J. The consecutive four year teaching commitment may be met by educators who are promoted, assigned, or advised to change their teaching assignment and work within the district or state in a similar role for which the Opportunity Award or Advancement Award was made, following PEJEP Committee approval.

K. Applicants are not eligible for Advancement Awards if the individuals are in their last semester of their degree or endorsement programs or if they have completed their degree, endorsement, or advanced degree program.

L. The PEJEP Committee has the discretion to accept and fund applications received after established deadlines provided that timely applications shall be considered first and all funding shall be approved and distributed only to the extent of funds available.

R690-100-8. Provisions or Requirements for the Technology Training Component of 53A-1a-601(4)(a).

Technology training courses, programs or conferences that provide professional development for public school superintendents, administrators and principals in the effective use of technology in public schools shall be submitted to the PEJEP Committee by applicants for consideration and approval under 53a-1A-601(4).

KEY: scholarships, awards, educators
November 23, 2009 53A-1a-602(5)
Notice of Continuation December 14, 2011

R698. Public Safety, Administration.
R698-1. Public Petitions for Declaratory Orders.
R698-1-1. Authority.

A. As required by Section 63-46b-21, this rule provides the procedures for submission, review and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

1. Procedures specified in this rule pursuant to Chapter 46b of Title 63.

2. The applicable procedures of Chapter 46b of Title 63.

3. Applicable procedures of other governing state and federal law; and

4. The Utah Rules of Civil Procedure

R698-1-2. Definitions.

Terms used in this rule are defined in Section 63-46b-2, except and in addition:

A. "Agency" means the pertinent division, bureau or office within the Department of Public Safety except the Division of Peace Officer Standards and Training and the Division of Driver License Services.

B. "Declaratory order" means an administrative interpretation or explanation of rights, status and other legal relations under a statute, rule or order.

C. "Director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings.

D. "Order" is defined in 63-46a-2.

E. "Superior agency" means Commissioner of the Department of Public Safety.

R698-1-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the director who shall mark the petition with the date of receipt.

B. The petition shall:

1. Be clearly designated as a request for an agency declaratory order.

2. Identify the statute, rule or order to be reviewed.

3. Describe in detail the situation or circumstances in which applicability is to be reviewed.

4. Describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous.

5. Include an address and telephone number where the petitioner can be contacted during regular working hours.

6. Declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months.

7. Be signed by the petitioner.

R698-1-4. Reviewability.

The agency shall not review a petition for declaratory orders that is:

A. Not within the jurisdiction or competence of the agency.

B. Trivial, irrelevant or immaterial.

C. Otherwise excluded by state or federal law.

R698-1-5. Intervention.

A person may file a petition for intervention under Section 63-46b-9 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section 3 of this rule.

R698-1-6. Petition Review and Disposition.

A. The director shall promptly review and consider the petition and may:

1. Meet with the petitioner.

2. Consult with counsel or the Attorney General.

3. Take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

B. The director may issue an order pursuant to Section 63-46b-21(6).

C. If the director orders an adjudicative proceeding under 63-46b-21(6):

1. The proceeding shall be formal and governed by the procedures of 63-46b or other applicable law if a petition for intervention has been filed within the limits of Section 5 of this rule, or

2. The proceeding may be designated as formal or informal and follow the appropriate procedures of 63-46b, agency rules or other applicable law if a petition for intervention has not been filed within the limits of Section 5 of this rule.

R698-1-7. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Section 63-46b-12 and -13 or as otherwise provided by law:

A. If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

B. The petitioner may appeal a director's review or reconsideration decision to the superior agency unless otherwise provided by law.

C. If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: administrative procedure, enforcement (administrative)
1993 63-46b-21
Notice of Continuation December 16, 2011

R698. Public Safety, Administration.
R698-2. Government Records Access and Management Act Rule.
R698-2-1. Purpose.

The purpose of the following rule is to provide procedures for access to government records of the Utah Department of Public Safety (Department).

R698-2-2. Authority.

This rule is authorized by Sections 63-2-204 of the Government Records Access and Management Act (GRAMA), and Section 63-46a-3 of the State Rulemaking Act.

R698-2-3. Allocation of Responsibility within Entity.

A. The Department and its agencies shall be considered a single government entity and the Commissioner of Public Safety or designee shall be considered the chief administrative officer of the Department and its agencies for purposes of Section 63-2-401.

B. For the purposes of Section 63-2-206, the Department shall be considered a single government entity. The agencies within the Department may share their records as necessary to perform their respective tasks provided that the recipient agency shall not further disclose any non-public record which it receives. Any decision concerning the disclosure of non-public records outside the Department shall be made only by the records officer or responsible authority in the agency which created the record, except when such decision has been appealed as provided in this rule.

C. The Department or its agencies may create general written agreements to govern the sharing of non-public records with law enforcement agencies outside the Department. Such an agreement shall include a list of the record series intended to be covered by the agreement, the classifications of each record series, and the certification by the recipient agency outside the Department that the recipient agency shall not make any further disclosure of the non-public record without the consent of the Department or the agency which created the record. When such an agreement is in place for the Department or any of its agencies, the Department or the agency which created the record may waive the requirement for a specific disclosure statement for each record requested, provided that the requested record is included in the list of record series in the agreement.

R698-2-4. Requests for Access.

Requests for access to government records of the Department of Public Safety (DPS) and its agencies should be made in writing. Such written requests shall be in accordance with the provisions of, or on department forms which are specified in R698-2-5.

A. For media organizations requests: DPS, Public Information Officer, 4501 South 2700 West, Salt Lake City, Utah 84119.

B. For all other requests, application should be made in writing to the agency from which the information is requested, as follows:

1. For records held by DPS, Administrative Services Division and all other records held by DPS agencies not specifically referenced below: Records Officer, Administrative Services Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

2. For records held by the Division of Comprehensive Emergency Management: Records Officer, Comprehensive Emergency Management, 1110 State Office Building, Salt Lake City, Utah 84114.

3. For records held by the Driver License Division: Records Officer, Driver License Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

4. For records held by the Law Enforcement and Technical Services Division select the appropriate bureau below:

a. Records Officer, Bureau of Criminal Identification, 4501 South 2700 West, Salt Lake City, Utah 84119.

b. Records Officer, DPS, Communications Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

c. Records Officer, Regulatory/Security Licensing Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

d. Records Officer, State Crime Lab, 4501 South 2700 West, Salt Lake City, Utah 84119.

5. For records held by DPS, Management Information Services Division: Records Officer, Management Information Services, 4501 South 2700 West, Salt Lake City, utah 84119.

6. For records held by Peace Officer Standards and Training: Records Officer, Peace Officer Standards and Training, 4525 South 2700 West, Salt Lake City, Utah 84119.

7. For records held by the State Fire Marshal: Records Officer, State Fire Marshal, 4501 South 2700 West, Salt Lake City, Utah 84119.

8. For records held by the Utah Division of Investigation: Records Officer, Division of Investigation, 5272 College Drive, Murray, Utah 84107.

9. For records held by the Utah Highway Patrol: Records Officer, Utah Highway Patrol, 4501 South 2700 West, Salt Lake City, Utah 84119.

R698-2-5. Forms.

A. The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests.

1. Form DPS 2-204(1), "Request for Records", is for use by all persons requesting records from the Department. It is intended to assist persons who request records to comply with the requirements of Subsection 63-2-204(1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization (if any), a description of the records requested, and information regarding the requester's status, for records which are not public.

2. Form DPS 2-206(2), "Certification by Requesting Governmental Entity", is for use by another governmental entity requesting controlled or private records from the Department, pursuant to Subsection 63-2-206(2). This form requires the information found in Form DPS 2-204(1), as well as certain representations required from the governmental entity, if the information sought is not public.

3. Form DPS 2-206(5), "Disclosure and Agreement", is for use when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63-2-206(5). This form discloses to the governmental entity certain information regarding restrictions on access, and obtains the written agreement of the governmental entity to abide by those restrictions.

B. The Department or its agencies may use forms to respond to requests for records.

R698-2-6. Fees.

A fee may be charged for copies of records provided. Amounts charged for photocopying will reflect costs as authorized by Chapter 38, Title 63, and Subsection 63-2-203(1). Fees must be paid at the time the records are provided to the requester. A fee schedule for the direct and indirect costs of photocopying or compiling a record may be obtained from the appropriate records officer.

R698-2-7. Waiver of Fees.

Fees for photocopying and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203(3). Request for this waiver of fees shall be made to the appropriate records officer.

R698-2-8. Requests for Access for Research Purpose.

Access to private or controlled records for research purposes shall be accomplished in accordance with Subsection 63-2-202(8). Requests for access to such records for research purposes shall be made to the appropriate records officer.

R698-2-9. Intellectual Property Records.

When the Department determines that it owns an intellectual property right, it may elect to duplicate and distribute such materials in accordance with Subsection 63-2-201(10). Decisions with regard to these materials will be made by the Department Records Officer. Any questions regarding the photocopying and distribution of such materials should be addressed to the Department Records Officer.

R698-2-10. Request to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63-2-603. Such request should be made to the appropriate records officer.

R698-2-11. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal adjudicative proceedings under the Utah Administrative Procedures Act. See Chapter 46b, Title 63.

R698-2-12. Appeals.

The Department Administrative Law Judge, 4501 South 2700 West, Salt Lake City, Utah 84119, shall serve as the designee of the Commissioner of Public Safety for the purpose of determining discretionary access to records as set forth in Subsection 63-2-201(5)(b) and also for the purpose of hearing appeals as set forth in Section 63-2-401.

KEY: government documents, freedom of information, public records
1993 63-2-204
Notice of Continuation December 16, 2011

R698. Public Safety, Administration.
R698-3. Americans With Disabilities Act (ADA) Complaint Procedure.
R698-3-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Department of Public Safety (hereinafter; department), hereby adopts and defines, a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

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

R698-3-2. Definitions.

A. "The Department ADA Coordinator" means the Department of Public Safety's coordinator, or his designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

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

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

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

R698-3-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;
(2) include the nature and extent of the individual's disability;
(3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
(4) describe the action and accommodation desired; and
(5) be signed by the individual or by his or her legal representative.

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

R698-3-4. Investigation of Complaint.

A. The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R698-3-5. Issuance of Decision.

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

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

R698-3-6. Appeals.

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the department's executive director or designee.

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

E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve the executive director or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade; he shall also consult with the State ADA Coordinating Committee.

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

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R698-3-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, disabilities act*
1993 67-19-32
Notice of Continuation December 16, 2011

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, 2011 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 Constructions 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.

4.10.4 The requirements listed in Sections 4.10.2 and 4.10.3 of these rules do not apply to licensed journeyman plumbers who meet the requirements listed in 4.4.10 of these rules.

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 piping 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: (d) 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: (e) 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 5.2.1.6 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(2)(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: (P) 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
December 24, 2011 53-7-305
Notice of Continuation March 16, 2011

R728. Public Safety, Peace Officer Standards and Training.
R728-101. Public Petitions For Declaratory Rulings.
R728-101-1. Authority.

The authority for this rule is authorized under 63G-4-301 which describes how interested parties may petition an agency with regard to making, amending, or repealing rules.

R728-101-2. Definitions.

A. Terms used in this rule are defined in Section 63G-4-103.

B. In addition:

1. "order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons;

2. "declaratory ruling" means an administrative interpretation or explanation or rights, status, and other legal relations under a statute, rule, or order; and

3. "applicability" means a determination if a statute, rule or order should be applied, and if so, how the law stated should be applied to the facts.

R728-101-3. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the director of POST.

C. POST shall stamp the petition with the date of receipt.

R728-101-4. Petition Form.

The petition shall:

1. be clearly designated as a request for a declaratory ruling;

2. identify the statute, rule, order to be reviewed;

3. describe the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular work days; and

6. be signed by the petitioner.

R728-101-5. Petition Review and Disposition.

The director or designee shall:

1. review and consider the petition;

2. prepare a declaratory ruling stating:

a. the applicability or non-applicability of the statute, rule, or order at issue;

b. the reasons for the applicability or non-applicability of the statute, rule, or order; and

c. any requirements imposed on the agency, the petitioner, or any person as a result of the ruling.

3. POST may:

a. interview the petitioner;

b. hold a public hearing on the petition;

c. consult with counsel or the Attorney General; or

d. take any action POST, in its judgement, deems necessary to provide the petition adequate review and due consideration.

4. POST shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.

5. POST shall retain the petition and a copy of the declaratory ruling in its records.

KEY: law enforcement officers, public petitions declaratory rulings
1992 63G-4-103

Notice of Continuation December 13, 2011 63G-4-301

R728. Public Safety, Peace Officer Standards and Training.
R728-401. Requirements For Approval and Certification of Peace Officer Basic Training Programs and Applicants.
R728-401-1. Authority.

This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of peace officer training academies.

R728-401-2. Academy Approval.

Any agency wishing to conduct a basic peace officer training program may do so with the approval of the POST Council and by complying with the POST approved procedures.

R728-401-3. Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants will pass the POST entrance level test. The POST entrance level test is a valid test used to demonstrate ability in the areas of reading comprehension, basic mathematic skills, basic grammar and writing skills.

C. All applicants will complete the POST application packet. POST must receive application packets at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST. Without exception, medical requirements will be completed and submitted to POST before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in Section 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to Section 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students will adhere to the following guidelines when providing POST with application packets.

a. Check applications to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. Provide POST with applications at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

c. Bring to POST's attention any information provided in the application that should be examined closely in light of the provisions outlined in Section 53-6-203 and R728-403.

D. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

Note: Any applicant denied by POST may appeal the decision by following the approved POST appeal process.

E. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

F. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Contractual Agreement Form indicating they are aware of and are willing to teach the POST approved performance objectives.

G. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, requires a minimum score of 80% to pass the test. Requirements necessary to pass the physical assessment test are set by POST and approved by the POST Council.

H. Attendance rosters are to be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than two days of the police academy and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Emergency Vehicle Operation
7. Vehicle Operation Liability
8. Vehicle Operation Practical
9. Arrest Control Techniques (practical exam)
10. Firearms Safety
11. Firearms Range/Day Shooting (qualification only)
12. Firearms Range/Night Shooting
13. Reasonable Force
14. Firearms Decision Making
15. Crimes-In-Progress (practical only)

I. Sponsoring agencies and programs must ensure that students possess a valid driver license when involved in any training that requires the operating of a motor vehicle. POST recommends that driver license checks be made through the State Division of Driver License.

J. Successful completion of the course and completion of all POST required paperwork is necessary before certification or certifiability will be granted. The paperwork must be submitted to POST within two weeks of completion of the course.

K. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program. Anyone failing the Physical Assessment Exam will have four years to meet the requirements.

L. POST will conduct annual audits and site visits for each satellite or agency academy to verify that they are conforming to POST standards.

M. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

N. No person may function with any authority until he has satisfactorily completed an approved training program and received POST certification.

R728-401-4. Process for Requesting Certification.

Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided and certify the applicant when completion requirements have been met.

KEY: law enforcement officers, peace officer basic course, approval
January 20, 2007 53-6-202
Notice of Continuation December 13, 2011

R728. Public Safety, Peace Officer Standards and Training.
R728-402. Application Procedures to Attend a Basic Peace Officer Training Program.
R728-402-1. Policy.

A. Pursuant to Sections 53-6-203 and 53-6-204 it shall be the responsibility of each law enforcement agency, upon its hiring of an employee, to submit a complete application to POST before admission is approved to a basic peace officer training program.

1. An agency sponsored applicant is defined as a full time paid employee of a state, municipal or county police or sheriff's agency.

2. Part time or reserve applicants will not be admitted as agency sponsored employees into a basic peace officer training program.

B. Self-Sponsored Applicants will not be accepted at POST unless special circumstances exist and approval has been granted by the director of the division.

1. Self-Sponsored applicants must submit a complete application to POST before they will be admitted to a basic peace officer training program.

R728-402-2. Procedure.

A. Application will be made by completing the POST approved application packet. Application packets can be obtained from the POST website.

B. Application must be submitted four weeks prior to the start of the academy via website or mail in order to allow POST adequate time to process applications and schedule applicants.

C. Applications must be complete when submitted to POST. POST will not accept any application that is not complete. The agency administrator must sign the completed application verifying the applicant is a full time employee of their department.

D. Peace Officer Standards and Training will pay the cost of board, room and supplies for sponsored students attending the Police Academy.

E. Self-Sponsored students must pay the current approved rate.

F. Attendance at the Academy will be denied for failure to meet the requirements set forth in Section 53-6-203 and Rule R728-403.

KEY: law enforcement officers, basic application procedures, police training
February 5, 2009 53-6-203
Notice of Continuation December 13, 2011

R728. Public Safety, Peace Officer Standards and Training.
R728-403. Qualifications For Admission To Certified Peace Officer Training Academies.
R728-403-1. Authority.

This rule is authorized by Subsection 53-6-105(k).

R728-403-2. United States Citizenship Requirement.

The applicant shall be a United States citizen.

A. The applicant shall provide the division proof of United States citizenship by providing a copy of birth certificate, or other formal government document indicating United States citizenship.

B. Naturalized citizens shall provide proof of U.S. citizenship.

1. Naturalized citizens may indicate their naturalization number on the application for peace officer training and certification. Naturalized citizens shall not attach a copy of their naturalization certificate, whereas copying naturalization certificates without permission is a violation of federal law or;

2. Naturalized citizens may indicate the number of their United States passport on the application for peace officer training and certification. The applicant shall attach a photocopy of their United States Passport to the application.

R728-403-3. Age Requirement.

The applicant shall be at least 21 years old at the time of appointment as a peace officer. This provision shall be satisfied with a copy of the birth certificate, official driver license or state identification card.

R728-403-4. Criminal History Background Checks.

A. Criminal history background checks shall be required of every applicant for basic peace officer training and every applicant for peace officer certification or authority, or applicant for reactivation of peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, 53-6-206, and 53-6-208.

B. The criminal history background check shall be completed in the following manner:

1. All applicants shall be required to submit, at least two acceptable POST fingerprint cards for examination by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation.

2. If the applicant is found not to have a criminal record, the supervisor or staff member making the computerized criminal history records check shall make a written note in the applicant's file indicating "no criminal record found", and the supervisor or staff member shall sign their name as the person conducting the criminal history records check.

3. If the supervisor or staff member conducting the examination of the application finds that the applicant has a criminal record, the file shall be reviewed by the certification section to determine if the applicant meets the requirements to be accepted into a peace officer training program.

4. Minor traffic violations shall not be considered a reason to have the applicant's criminal record reviewed by the certification section unless the applicant has more than three minor traffic violations within two years of making application for peace officer basic training and certification.

a. The following shall not constitute minor traffic violations, and may be considered in determining good moral character of the applicant:

i. driving under the influence of alcohol or drugs;
ii. automobile homicide;
iii. reckless driving;
iv. evading a police officer;
v. driving on suspension;
vi. driving on revocation;
vii. negligent homicide;
viii. failure to maintain automobile insurance.

R728-403-5. Felony Convictions.

"Felony" crimes for purposes of Title 53, Chapter 6, shall be defined as any criminal conduct other than those crimes defined as misdemeanors or infractions in the statutes of this state or any similar statute of any other jurisdiction. Persons convicted of felonies will not be accepted for admission to peace officer certified training programs.

R728-403-6. Convictions or Involvement in Crimes Outlined in Section 53-6-211.

A. "Crimes involving dishonesty" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(F) below.

B. "Crimes involving unlawful sexual conduct" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(G) below.

C. "Crimes involving physical violence" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(H) below.

D. "Driving under the influence of alcohol or drugs" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(I) below.

E. "Unlawful Sale, Possession, or Use of Narcotics, Drugs, or Drug Paraphernalia" for purposes of Subsection 53-6-211(1)(d)(iii) means conviction of a drug related offense as set forth in R728-409-3(C) below.

R728-403-7. Educational Requirement.

A. All applicants for basic peace officer training and every applicant for peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, and 53-6-206 shall have obtained a high school education.

1. High school education shall be recognized by:

a. a copy of a high school diploma;

b. a copy of high school transcript; or

c. a notarized letter from the high school administration indicating that the individual has graduated from the high school.

2. Equivalency of high school education can be obtained by:

a. successful completion of a GED program, recognized by a copy of the certificate.

3. In cases where the high school education was completed in a foreign country, and where the high school diploma or document is written in a language other than English, the document shall be verified by an interpreter before accepting the document as an official high school education document.

4. In cases where an applicant is unable to provide proof of a high school diploma or equivalent but has a four year or higher college degree, proof of the college degree will satisfy the high school diploma requirement.

R728-403-8. Good Moral Character Requirement.

A. Good moral character for purposes of Title 53, Chapter 6 means possessing moral traits of honesty and truthfulness, integrity, respect among the community for lawful behavior, respect for the rights of others, and obedience to the lawful directives of public officers or officials, or persons charged with the enforcement of the law.

B. Conduct which may not meet the standard of good moral character includes, but is not limited to:

1. conduct which violates Section 53-6-211;

2. a discharge from the United States military under circumstances specifically designated as:

a. Bad Conduct Discharge (BCD);

b. dishonorable discharge (DD);

c. Administrative Discharge of "Other Than Honorable"

(OTH); or

d. Administrative Discharge of "General Under Honorable Conditions" (GEN);

3. the unlawful possession, use, consumption, or distribution or a controlled substance;

4. association in an organization which advocates the violent overthrow or has made overt attempts to violently overthrow the government of the United States or the State of Utah;

5. suspension or revocation of peace officer certification or similar provision of another jurisdiction.

R728-403-9. Physical, Emotional, or Mental Condition Requirement.

Physical, emotional, or mental conditions for purposes of Title 53, Chapter 6, includes, but is not limited to, conditions diagnosed by a medical or mental health professional, which, in the expert opinion of said professional, prohibits the employee from performing the essential functions of law enforcement.

KEY: law enforcement officers, qualifications for training*
November 25, 2008 53-6-203
Notice of Continuation December 13, 2011 53-6-211

R728. Public Safety, Peace Officer Standards and Training.
R728-404. Basic Training Basic Academy Rules.
R728-404-1. Admission Requirements.

A. United States Citizenship.

B. Minimum age of 21 years at the time of appointment as a peace officer.

C. Fingerprinting and search of local, state and national fingerprint files to determine whether applicant has a criminal record, final certification to be withheld until this search is completed.

D. May not have been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary, or for which the applicant could have been imprisoned in the penitentiary of this or another state. Conviction of any offense not serious enough to be covered under Subsection (1)(d) of 53-6-203 Utah Criminal Code, involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination. Notwithstanding the provisions of Title 77, Chapter 18, expungement of felony convictions obtained in this state and any other jurisdiction shall be considered for purposes of this subsection.

E. Shall be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement.

F. Shall demonstrate good moral character as determined by a background investigation, which may include consideration of offenses expunged under Title 77, Chapter 18.

G. Free of any physical, emotional or mental conditions that might affect adversely the performance of duty as a peace officer as determined through a selection process by the employing agency.

R728-404-2. Graduation Requirements.

A. Written Examinations and Quizzes.

1. Examinations and quizzes are a necessary method of testing not only the student's substantive knowledge, but also their reading, comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. They will be given as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor will result in dismissal from the Academy. Students must score an average of 80% on all exams except the first aid, arrest control, and certification exams where a minimum of 80% must be scored.

2. The cadet is required to maintain an 80% weighted average or higher from each weekly quiz. If a cadet falls below the 80% weighted average after three weeks in the academy, they will be counseled by the training staff and may be offered remediation.

3. The cadet is required to pass each exam with 80%. If a cadet fails the exam they will be offered remediation from the training staff and allowed one retake. For purposes of academic excellence awards, the first exam will be used in the calculation.

4. A final Certification Examination will be required of each student in order to achieve peace officer/special function officer certification or become certifiable. A minimum score of 80% must be scored. If the score is less than 80%, the student will be allowed to take one make-up exam to achieve the required 80%. Make-up exams must be taken prior to one year from the date of the initial exam. If the student fails to achieve 80% on the make-up certification examination, he will be required to go through the training again to achieve certification or become certifiable (be eligible to be certified when hired in a position requiring certification.) It will be the policy of the Academy to cover the expenses of a returning sponsored student; however, if a sponsored student is twice suspended from the Academy and that student continues in his attempt to complete the Academy, it will become the responsibility of the sponsoring agency and/or the student to pay the tuition assessed by the Academy. Returning self-sponsored students will be responsible for their expenses and tuition.

B. Participation.

Students will actively participate in physical fitness training, practical problems, classroom work, tours, graduation exercises, and any other activities unless specifically excused by the training supervisor.

C. Reports.

Students may be required to complete written reports. All reports will be graded on a pass/fail basis.

D. Firearms Qualification.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in firearms training and demonstrate the ability to safely handle a firearm, and

b. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will receive one opportunity to retake the course(s) and qualify. Retests will be scheduled by the POST Firearms Instructor and applicable training supervisor.

Note: The POST Staff Firearms Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include:

a. weather,
b. quality/quantity of instructors,
c. equipment problems,
d. medical problems,
e. etc.

If the POST Staff Firearms Instructor decides there were one or more circumstances beyond the control of the student or the instructor and the student fails to qualify, the POST Staff Firearms Instructor may schedule a retest.

E. Vehicle Operation.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in all scheduled classroom and practical vehicle operation training (any training missed must be made up before a student can graduate and be certified or become certifiable),

b. demonstrate the ability to safely handle a vehicle in an emergency situation, and

c. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will:

a. have four more opportunities to qualify on the day of the test;

b. after remedial training the student will have three more opportunities to qualify at a later date which will be scheduled by the driving instructor and the training supervisor.

Note: The POST Staff Vehicle Operation Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include but are not limited to:

a. weather,
b. quality/quantity of instructors,
c. equipment problems,
d. medical problems,

e. etc.

If the POST Staff Vehicle Operation Instructor decides there were one or more circumstances beyond the control of the student and the student fails to qualify, the POST Staff Vehicle Operation Instructor may schedule a retest.

F. Physical Training.

Participation in physical training is required during the basic academy program. Students will be required to take the physical assessment test at the end of the peace officer program and score at the 50th percentile in each exercise to graduate. If a student fails to pass the physical assessment test, one retest will be administered before the graduation ceremony. Should students fail to meet the physical fitness testing requirements, they will not be permitted to have their picture taken with the class or graduate with the class.

G. Arrest Control/Baton.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in scheduled arrest control/baton training,

b. demonstrate the ability to apply arrest control and baton techniques, and

c. pass a POST approved practical examination.

2. Retesting.

H. Failure to Qualify in a Skill Area.

1. Students who fail to qualify in any skill area during a basic training program, will have four years to meet the approved standard before they will be required to go back through an academy program.

2. Retesting during the four year period will be at the convenience of POST and a testing fee will be imposed each time a test is administered.

3. POST may refuse to administer a test at any time if POST feels it's in the best interest of the individual and/or POST.

I. Counsel.

Individual counseling is available to any student on request to his class training supervisor.

J. Make-Up Policy.

1. All requirements must be satisfied before a student can graduate and become certifiable or certified.

2. Basic training supervisors will notify the student and his department head of any deficiencies in meeting graduation requirements.

3. The student and department head will be advised of the policy and procedures involved in the make-up of any deficiencies for graduation and certification.

4. Should a student become ill or injured to such an extent that it is impossible or unwise to participate in any part of the academy training, a doctor must be seen by the student. A written explanation must be obtained from the doctor and presented to the student's training supervisor.

K. Attendance.

1. Students will be required to attend all training unless an emergency exists or a valid excuse is given.

2. More than three unexcused absences may result in suspension from the Academy. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences will be cleared through the student's Academy supervisor before the absence occurs. It is the student's responsibility to contact the Academy supervisor when he is absent or late. Attendance information may be made available to department heads periodically.

3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.

4. In no case will a student be certified or become certifiable who has missed more than 10% of the basic course until the necessary make-up work has been completed.

5. If a student has missed a significant part of any block of instruction, as determined by the POST staff, he will not be certified or become certifiable until the necessary make-up work is completed.

6. Under no circumstances will a student graduate if he misses any of the following classes until they are made-up:

a. Ethics and Professionalism,
b. Laws of Arrest,
c. Laws of Search and Seizure,
d. Use of Force,
e. First Aid (CPR only),
f. Emergency Vehicle Operation,
g. Vehicle Operation Liability,
h. Vehicle Operation Practical,
i. Arrest Control Practical Examination,
j. Firearms Safety,
k. Firearms Range/Day Shooting (qualification only),
l. Firearms Range/Night Shooting,
m. Reasonable Force,
n. Firearms Decision Making, or
o. Crimes-In-Progress (practical only).

L. Grounds for Dismissal From Basic Training:

1. failure to meet the minimum academic standard,
2. failure to meet the physical fitness standard,
3. failure to achieve 80% on the State Certification exam,
4. evidence of any health problem that would keep the student from successfully completing the basic training program,
5. failure to comply with Academy rules,
6. failure to meet the standards as stated in Section 53-6-203, or
7. failure to satisfactorily perform in any of the skill areas required during basic training.

R728-404-3. Health Services and Emergencies.

A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments will be expected to pay for the above services and supplies.

C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls will not be accepted.

R728-404-4. Classrooms.

A. Students will be responsible for keeping the classrooms neat and clean. No food, drinks or smoking will be allowed in the classroom.

B. From time to time, POST will take portions of the training to locations other than the Academy. While at any of these locations, students will respect the property of others and conduct themselves accordingly. If any damage occurs, it will be reported to the training supervisor as soon as possible.

R728-404-5. Special Regulations.

A. Alcohol and Gambling.

No student will consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.

1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

2. Gambling will not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of Section D will be

suspended or dismissed from the Academy.

B. Dress Code.

Students are required to wear their individual department uniform beginning the first day of class. Because almost all training requires the wearing of the department uniform it is recommended that students have at least two clean uniforms available at all times.

The following dress code will be mandatory for self-sponsored students.

1. Male. Light blue long or short sleeve shirt, navy blue slacks, navy blue tie, and conservative dress shoes.

2. Female. Light blue long or short sleeve blouse, navy blue tie, navy blue dress slacks or skirt, and conservative dress shoes.

The official Academy patch will be worn on both sleeves of the self-sponsored uniform.

3. Only authorized Academy gym clothing will be worn during physical fitness training and arrest control techniques. No radio/tape head sets will be allowed during physical training classes. Hard soled shoes will not be worn on the gym floor.

4. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

a. Appropriate civilian clothing includes: blue jeans, slacks, t-shirts, sweaters, hats, coats, jackets and athletic shoes.

b. Inappropriate civilian clothing includes: cutoffs, shorts, halter tops, tank tops or any other item the training supervisor deems inappropriate.

The uniform requirement is intended to help encourage basic students to look and act in a more professional manner. Any staff member at any time can instruct a student to change a uniform or any apparel when in the opinion of the staff member it does not meet the intent of the dress code.

C. Grooming.

All students will be expected to maintain proper grooming habits at all times. Clothing will be clean and well cared for. Shoes will be shined. Male students will be clean shaven every day. Beards will not be allowed. Hair must be clean and neat. Male students will have hair trimmed so that it does not hang over the center portion of the shirt collar when the student is standing straight.

D. Conduct.

1. All students will be expected to conduct themselves in an adult and professional manner at all times.

2. No loud, abusive, or obscene language will be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they will be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status will be made by the training supervisor and approved, where necessary, through the chain of command.

R728-404-6. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability will be required to reimburse the Academy for the replacement value.

R728-404-7. Cost of Training.

Costs of Basic Training are born by the state for sponsored students. Self-sponsored students shall be charged the currently approved rate.

R728-404-8. Disciplinary Action.

A. Students do not have a protected property interest in their enrollment at the Academy. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards will be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the POST Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in anyone or more of the following actions:

1. verbal reprimand,
2. written reprimand,
3. probation,
4. referral to department for discipline,
5. suspension, or
6. dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student will be given the opportunity to speak in his behalf before any action is taken.

E. Once an action is decided upon, the student and his employing agency will be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his employing agency will be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the POST Policy and Procedure Manual.

R728-404-9. Dormitory Facilities.

All students will comply with the residency requirements for the Larry and Gail Miller Public Safety, Education and Training Center dorm facility. A copy of this policy will be provided to each student that will be using the dorm facility at the start of the academy class.

KEY: law enforcement officers, basic academy rules

December 1, 2007	**53-6-105**
Notice of Continuation December 13, 2011	**53-6-106**
	53-6-107

R728. Public Safety, Peace Officer Standards and Training.
R728-405. Drug Testing Requirement.
R728-405-1. Authority.

This rule is authorized by Sections 53-6-105, 53-6-203, and 53-6-211.

R728-405-2. Purpose.

A. Peace Officer Standards and Training has a compelling interest in ensuring that every student attending a basic peace officer training course, who may become certified and sworn to uphold the law, be drug free.

B. When peace officers and potential peace officers participate in illegal drug use and drug activity, the integrity of the police profession is diminished and public confidence is destroyed.

C. In order to protect the citizens of the State of Utah, to preserve public trust and confidence in a fit and drug free peace officer profession, and to maintain the credibility of peace officer training academies, Peace Officer Standards and Training shall implement a drug testing program.

R728-405-3. Procedure.

A. Applicants accepted to a POST approved basic peace officer training program will be tested some time during the POST training curriculum.

B. Testing will be done by following the POST drug testing policy. The policy outlines the specimen collection procedures, drug testing methodology, and other information and requirements pertinent to such a policy.

R728-405-4. Failure to Pass Drug Test.

A. Students attending an academy will be dismissed if drug testing indicates a positive result considered by a medical review officer to be a result of intentional ingestion of an illegal drug.

B. Students who are dismissed may appeal the denial or dismissal by following the procedures outlined in the POST policy and procedure manual. Appeal procedures may be obtained in written form at POST.

KEY: law enforcement officers, drug testing, drug testing programs

September 27, 2002	**53-6-105**
Notice of Continuation December 21, 2011	**53-6-203**

R728. Public Safety, Peace Officer Standards and Training.
R728-406. Requirements For Approval and Certification of Basic Correctional, Reserve and Special Function Training Programs and Applicants.
R728-406-1. Authority.

This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of Correctional, Reserve and Special Function Officer Training Programs and applicants.

R728-406-2. Academy Approval.

Any agency wishing to conduct a basic peace officer training program shall do so with the approval of the POST Council and by complying with the POST approved procedures.

R728-406-3. Policy and Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants shall have completed the POST application packet. Without exception, medical requirements will be completed before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students such as Weber State University or Salt Lake Community College will adhere to the following guidelines when providing POST with application packets.

a. It is the policy of POST that all applications will be checked to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. It is the policy of POST that applications will be provided to POST at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

c. It is the policy of POST that a class schedule and a list of instructors will be provided to POST before training begins.

C. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

D. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

E. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Form #77/1/89 (Performance Objectives Agreement) indicating they are aware of and are willing to teach the POST approved performance objectives.

F. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, will be given by POST. A minimum score of 80% is required to pass the test.

G. Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than 10% of the course and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Arrest Control Techniques (practical exam)

H. Sponsoring agencies and programs must ensure that students possess a valid drivers license when involved in any training that requires the operating of a motor vehicle. Driver license checks shall be made through the State Division of Driver License.

I. Successful completion of the course and completion of all POST required paperwork is necessary before certification will be granted.

J. Upon completion of the training program, sponsoring agencies and programs will contact POST and make arrangements for the Certification Exam to be given. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program.

K. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

L. The Certification Exam will not be given if all the above requirements have not been met.

M. No person shall function with any authority until he has satisfactorily completed an approved training program and received POST certification.

R728-406-4. Process for Requesting Certification.

Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided, ensure annual training is up to date and check to see if the individual seeking certification is the subject of a pending investigation. POST will certify the applicant when all requirements have been met. If there is an open investigation on the subject, or a problem with annual training hours, POST will refuse to certify the applicant and make the appropriate notifications.

KEY: law enforcement officers, approval for reserve basic course, approval for special function course*, approval for correctional basic course
October 1, 2007 53-6-202
Notice of Continuation December 21, 2011

R728. Public Safety, Peace Officer Standards and Training.
R728-407. Waiver/Reactivation Process.
R728-407-1. Purpose.

To provide an avenue for individuals who have met prescribed training standards to become certified as Utah law enforcement officers.

R728-407-2. Waiver of Basic Training Program.

A. Before being allowed to waive basic peace officer training, each applicant shall meet the standards and requirements outlined in 53-6-203 and 53-6-206. Applicants will also be required to submit the appropriate POST waiver application form. The waiver application and other information about waiver eligibility can be obtained by contacting the In-Service Bureau of POST.

1. Note: Waiver applicants have only two opportunities to pass the certification examination. Applicants who fail the first examination may take a make-up examination. An applicant must take the second examination within a 90-day period of the first examination. Applicants who obtain two failing scores on the certification examination will be required to attend the basic training program before certification will be granted.

2. Applicants may be required to attend any phase of the approved basic training course or specified in-service training.

3. Waiver applicants must meet the established physical training requirement. The physical training requirements are outlined in the waiver packet available at POST.

R728-407-3. Application Procedure.

A. All applicants under Section 53-6-206 (waiver of training) shall be processed in the following manner:

1. Request from applicant for waiver packet.

2. Packet to be sent to applicant

3. Applicant returns above completed forms to POST, along with the following:

a. photograph (applicant)

b. evidence of graduation from high school or equivalent or college diploma

c. evidence of successful completion of a comparable basic training course (Basic Certificate Course schedule showing subject matter and hours)

4. Evaluation of application and attendant documents. The staff training supervisor will determine if applicant has filed proper forms and will accomplish the following:

a. verification of successful completion of certified program

i. check POST files to verify in-state training

ii. out of state programs require verification from the POST agency or equivalent within that state

b. criminal records search of local, state and federal files

5. Decision as to whether or not applicant qualifies

a. application denied

i. applicant advised as to reason for denial

b. application approved

i. oral interview with supervisor of waiver course

ii. applicant advised as to conditions for his certification as described.

6. Certificate issued when conditions are satisfied and records are complete.

R728-407-4. Guidelines For Acceptance of Eligibility.

A. Applicants who have been certified city, county, state, federal, or military law enforcement officers and who do not exceed four years from the time of their certified status and the time they can complete the waiver process may be eligible for waiver.

1. Waiver Procedure

a. Completed applications form signed by applicant; and

b. Proof of employment and detailed job description from police agency applicant was employed by.

B. Applicants who have successfully completed a state, federal, or military law enforcement basic training academy within the last four years may be eligible for waiver.

1. Waiver Procedure

a. Completed application form signed by applicant;

b. Applicants must furnish proof of successful completion of a training program; and

c. Applicants may be required to furnish POST with a copy of their training curriculum.

R728-407-5. Restoration of Peace Officer Powers.

A. Peace officer powers become inactive when a certified peace officer is not actively engaged in performing peace officer duties for more than one year but less than four continuous years. Certified peace officers may have peace officer powers reactivated by filing a new application and completing the below listed requirement as specified by the director.

1. Completion of the POST waiver process.

Applicants who fail the certification examination twice will be required to attend basic training.

B. Lapse of certification occurs when a person has not been actively engaged in performing the duties of a peace officer for more than four continuous years.

1. Unless waived by the Director, successful completion of the POST basic training course is necessary before a lapsed certification can be reissued.

KEY: law enforcement officers, waiver of basic training*, reactivation process*

April 15, 1997	**53-6-105**
Notice of Continuation December 21, 2011	**53-6-203**
	53-6-206

R728. Public Safety, Peace Officer Standards and Training.
R728-408. POST Academy and the Emergency Vehicle Operations Range are Secure Facilities.
R728-408-1. Authority.

The authority for this rule is authorized under UCA Section 76-8-311.1(1)(c)(2).

R728-408-2. Purpose.

To provide for public safety within the training facilities of Peace Officer Standards and Training, and regulate the possession of firearms at the POST Academy and Emergency Vehicle Operations Range.

R728-408-3. Declaration.

The POST Academy and Emergency Vehicle Operations Range are declared as secure facilities pursuant to UCA Section 76-8-311.1(1)(c)(2).

R728-408-4. Possession of Firearms.

No firearms may be brought into the POST Academy and Emergency Vehicle Operations Range. Lockers shall be provided at the main office of the POST Academy and the Instructors Office at the Emergency Vehicle Operations Range. Any person carrying a firearm must surrender the firearm and secure it in a POST-provided locker upon entering the POST Academy and Emergency Vehicle Operations Range.

R728-408-5. Applicability of Rule.

This rule shall not apply to law enforcement officers and federal officers as defined by UCA Sections 53-13-103(1)(b), 53-13-106(1)(a).

KEY: firearms, emergency vehicle operations range, secure facilities, law enforcement officers

April 10, 2002	**76-8-311**
Notice of Continuation December 21, 2011	**53-13-103**
	53-13-106

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 December 21, 2011

R728. Public Safety, Peace Officer Standards and Training.
R728-410. Guidelines Regarding Failure To Obtain Annual Statutory Training.
R728-410-1. Authority.

This rule is authorized by Subsection 53-6-105(k).

R728-410-2. Suspension for Failure to Obtain Annual Statutory Training.

A. If an individual maintaining peace officer certification or authority under Title 53, Chapter 13 Utah Code Annotated, fails to obtain 40 hours of approved training as provided under Subsection 53-6-202(4), Utah Code Annotated, the peace officer's powers will be suspended until such time as the peace officer has:

1. obtained the 40 hours of training required for the deficient training year; or

2. if deficient more than one year, successfully complete the certification examination as indicated:

a. peace officers maintaining peace officer designation shall successfully complete the peace officer designation certification examination.

b. peace officers maintaining correctional officer certification or authority shall successfully complete the correctional officer certification examination.

c. peace officers maintaining peace officer certification or authority as a reserve officer and special function officer, shall successfully complete the reserve/special function officer certification examination.

d. peace officers maintaining more than one peace officer designation (i.e., correctional officer and peace officer designation; or special function officer and peace officer designation) shall be required to successfully complete the peace officer certification examination.

e. peace officers maintaining Reserve, Level II/Special Function Officer designation and Correctional Officer designation shall be required to successfully complete the certification examination applicable to their primary law enforcement employer.

f. peace officers maintaining Reserve Officer, Level I authority shall successfully complete the peace officer designation certification examination.

B. Any peace officer who fails to acquire 40 hours of approved annual training shall be prohibited from exercising peace officer powers until the required training is completed and reported to the division;

1. upon notification of deficient training by the employing agency, the division shall notify the peace officer and the employing agency before peace officer powers are suspended by the division. This will allow an opportunity for the deficient peace officer to explain the training deficiency or failure to report training to the division, and shall provide due process for the peace officer.

2. upon becoming aware that a peace officer is deficient in the 40 hour training requirement, the employing agency shall comply with (B) above.

3. peace officers who fail to acquire the 40 hours of annual training shall be notified by the division that their peace officer powers have been suspended. Notification by the division may be made orally or in writing. If notification is made orally, written notification shall be completed as soon as possible.

4. if the annual training requirement is completed and reported to the division after the suspension has been issued by the division, the peace officer shall be notified, in writing, that peace officer powers have been reinstated before the peace officer is allowed to resume peace officer duties and functions.

C. Any peace officer who fails to acquire 40 hours of training for two consecutive years will have his peace officer certification or authority designated "inactive" as per Utah Code Annotated, Section 53-6-202.

D. Any peace officer found to be exercising peace officer powers after notification from the division that peace officer powers have been suspended shall be subject to the provision of Rule R728-411.

KEY: law enforcement officers, annual training

April 15, 1997	**53-6-105**
Notice of Continuation December 21, 2011	**53-6-202**
	53-6-211
	53-13

R728. Public Safety, Peace Officer Standards and Training.
R728-500. Utah Peace Officer Standards and Training In-Service Training Certification Procedures.
R728-500-1. Authority.

This rule is authorized by Sections 53-6-105(k).

R728-500-2. Purpose.

The purpose of in-service training is to provide Utah law enforcement officers with the opportunity to obtain the knowledge and skills necessary to perform their duties in a professional and skillful manner. To this end, and to satisfy the requirements of 53-13-103(4)(b), Utah Peace Officer Standards and Training will provide an in-service training program that addresses the needs of the Utah law enforcement community.

R728-500-3. Statutory 40 Hour Training Requirement.

Pursuant to Subsection 53-13-103(4)(b), "A law enforcement officer shall, prior to exercising peace officer authority, satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council."

R728-500-4. Agency To Maintain Training Records.

A. The chief administrative officer of an agency employing peace officers is responsible for the recording of all training obtained by his peace officers. This record shall contain the following:

1. the subject or topic instructed
2. the number of classroom or field hours
3. the location of the training
4. the date of the training
5. the name of the instructor

B. This record shall be accurate and available in the event of an audit or subpoena of training records.

R728-500-5. Reporting Training, Agency Responsibility.

At the conclusion of each training year (July 1 - June 30), agencies employing peace officers are required to report to POST the number of training hours received by each officer employed by that agency. This report is to be submitted online and is due to POST by July 31 and must contain the following information:

A. the name of the officer
B. the officers POST ID number
C. the number of training hours for the training year.

R728-500-6. Violation of Statutory Training Requirement, Order of Suspension.

A. The Division of Peace Officer Standards and Training will suspend the peace officer powers of any officer who fails to receive 40-hours of approved training during the previous training year. The officer, and the officers employing agency, will be notified by letter of this action. This sanction will remain in effect until the deficient training is completed and reported to POST. The officer will have until October 1 to make up the deficiency. POST will notify the officer and employing agency when the officers peace officer powers have been reinstated.

B. Training received by a suspended officer in a new training year will be credited to the previous (deficient) training year until the deficiency is made up. Training used to clear up an old deficiency cannot be credited to the new training year. (The same training cannot be counted twice.)

C. Suspended officers who continue to perform the duties and functions of a peace officer will be in violation of Section 53-6-202, and will be subject to the penalties set forth in Utah Administrative Code, Rule R728-411.

D. Officers who are deficient after October 1 will be reported to Utah Retirement System.

R728-500-7. Authorized Training for POST In-Service Credit.

All training offered by POST (basic training, in-service training, and regional training) is authorized for POST in-service credit. The authority and responsibility for accepting other forms of training belongs to the chief administrative officer of each law enforcement agency. If the chief administrative officer approves the training, POST will accept that training for credit to satisfy the 40-hour training requirement. However, the chief administrative officer accepts the responsibility and liability for course content and instructor qualification.

The following guidelines detail current POST rules regarding various types of in-service training.

R728-500-8. Skills Areas Limited.

The in-service training reported shall not include any identical class or instruction repeated within a 12 month period, unless the training is of an ongoing or continuing basis. Exception to this requirement includes training in certain skill areas such as Arrest Control Techniques, Firearms Training, Martial Arts, etc.

R728-500-9. Basic Training Used For In-Service Credit.

Training received during the completion of a Basic Training Session can be credited towards the in-service training requirement.

R728-500-10. Credit For College Courses.

Hour-for-hour credit will be granted for attendance in any college course that is required to earn a degree. The officer shall include a copy of the college transcript in his/her agency training file as proof of successful completion of the course.

R728-500-11. Correspondence Courses.

Correspondence courses may be approved for in-service credit. Prior approval shall be received from the officers chief administrative officer who will determine the number of credit hours the course is worth.

R728-500-12. Video Tapes/Audiovisual Presentations.

In-service credit may be granted for viewing law enforcement or position related audiovisual presentations (i.e., films, videotapes, satellite programming, etc.), as long as the training includes a structured lecture or classroom discussion regarding the viewed materials.

R728-500-13. In-Service Credit For Instructors.

Training credit may be granted to POST certified instructors on an hour-for-hour basis; an equivalent amount of credit may be claimed for preparation time. (example: a two hour class is worth four hours of in service credit: two hours of instruction plus two hours of preparation) In-service credit can be claimed by the instructor once each year for each course instructed. This is to avoid in-service credit granted for duplicate instruction.

R728-500-14. Credit For Study For Promotional Exams.

An agency chief administrative officer may grant up to five hours of in-service training credit to officers who have studied for, and passed, a promotional examination. Before awarding credit, the agency administrator shall ensure that:

A. The study material was not limited to the department's policy and procedure manual. Study aids shall consist of textbooks that deal with subjects such as Managerial Techniques, Supervisory Skills, Criminal Investigation, and other law enforcement skills.

B. The officer passed the examination. The officer need not be promoted to receive training credit.

R728-500-15. Credit for Regularly Scheduled Meetings and Conferences.

Monthly, quarterly, or other regularly scheduled meetings or conferences will not be granted in-service credit unless it can be specifically demonstrated the session is devoted to training and not for the purpose of exchanging information (i.e. detective meetings, intelligence briefings, etc.).

R728-500-16. Credit for Physical Fitness Training.

An officer can claim up to five hours of in-service training credit for participation in an agency approved physical training program.

R728-500-17. Requirements for Officers Employed for a Portion of the Training Year.

A full 40 hours of in-service training is required only if an officer is employed for the entire training year. Officers who are employed after the start of the reporting period, (July 1), need only to obtain a prorated number of training hours. Therefore, an officer shall obtain 3.5 hours for each month employed during the reporting year. (Example: An officer hired in January shall only be required to obtain 21 hours of in-service training for that training year.)

KEY: law enforcement officers, in-service training
December 3, 2007 53-6-105
Notice of Continuation December 21, 2011 53-13-103(4)(b)

R850. School and Institutional Trust Lands, Administration.
R850-8. Adjudicative Proceedings.
R850-8-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-204(3), 53C-1-204(10)(c), and Section 53C-1-304.

R850-8-200. Scope.

This rule governs adjudicative proceedings conducted by the School and Institutional Trust Lands Administration Board of Trustees or any hearing examiner designated by the board, and judicial review of all such proceedings.

R850-8-300. Definitions.

1. Adjudicative proceeding - means a review by the board of a final agency action that directly determines the legal rights, duties, or other legal interests of one or more identifiable persons.

2. Board - means School and Institutional Trust Lands Administration Board of Trustees. References to the board shall also apply to any hearing examiner appointed unless the context of rules requires otherwise.

3. Director's Minutes - means the weekly compendium of actions taken by the Director and posted on the agency's website to provide public notice for record keeping purposes.

4. Final agency action - means a written determination by the Trust Lands Administration of the legal rights, duties, or other legal interests of one or more identifiable persons. The determination may be in any form deemed appropriate by the Trust Lands Administration, including but not limited to, a notation on the Director's Minutes, a narrative record of decision, a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), or a decision letter. Decisions by the director or the agency to sell, exchange, or lease specific real property are not subject to administrative review pursuant to Subsection 53C-1-304(2)(b), and therefore do not constitute final agency actions.

5. Party - means the Trust Lands Administration or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or Trust Lands Administration rule to participate as parties in an adjudicative proceeding.

6. Person - means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

7. Petitioner - means a person who requests the initiation of any proceeding.

8. Respondent - means a person against whom an adjudicative proceeding is initiated, or whose property interest is directly affected by a proceeding initiated by the board or by another person.

R850-8-400. Liberal Construction.

This rule will be liberally construed to secure just, speedy, and economical determination of issues presented to the board.

R850-8-500. Deviation from Rules.

The board, in its sole discretion, may permit a deviation from this rule for good cause, including but not limited to situations where compliance is impractical or unnecessary, or in the furtherance of due process or the statutory obligations of the board.

R850-8-600. Appearances and Representations.

1. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the board.

2. Attorneys.

Except as provided in R850-8-600(1), representation at hearings before the board will be by attorneys licensed to practice law in the state of Utah, or in the discretion of the board, attorneys licensed to practice law in another jurisdiction.

R850-8-700. Conferences Encouraged.

This rule does not preclude the Trust Lands Administration or the board at any time from holding conferences with parties and interested persons to encourage settlement, clarify the issues, simplify the evidence, facilitate discovery in formal adjudicative proceedings, or otherwise expedite the proceedings.

R850-8-800. Filing of Pleadings.

An original and ten copies of all documents, including any exhibits, required or permitted to be filed, shall be filed at the office of the director. The director shall not accept less than the required number of copies. Each party filing documents with the director shall send one copy by first class mail to each other party to the proceeding.

R850-8-900. Final Agency Action.

1. The final agency action shall be in writing. Except for a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), the final agency action shall be signed by the director or his designee.

2. Nothing in this rule 850-8 shall require the agency to mail notice of routine administrative and record-keeping matters otherwise noted on the Director's Minutes to any person, including without limitation assignments, reinstatements, notifications of the expiration of any lease or instrument by its own terms, cancellations of instruments for nonpayment after a notice of cancellation issued pursuant to R850-5-200(5), voluntary relinquishments or amendments, approvals of range improvements or grazing permit renewals, or fee waivers.

3. Final agency actions requiring the payment of funds; providing notice pursuant to R850-5-200(5) that an instrument will be subject to cancellation unless payment of funds is made; exercising any discretionary right of the agency to readjust or otherwise modify an existing agreement; declaring any default under an existing agreement; declining or conditioning any assignment; making rule-based determinations where administrative review is provided by rule; or otherwise directly determining the legal rights or obligations of a person will be mailed to that person and any other person with a right to notice by statute, rule or contract.

R850-8-1000. Appeal of Final Agency Action.

1. The Trust Lands Administration may by rule specifically designate certain categories of Trust Lands Administration actions that are not subject to appeal.

2. Except where no appeal is available pursuant to statute or rule, an appeal may be initiated only by a party to a contract that is the subject of a final agency action, or whose legal interests are directly determined by the final agency action. A written petition must be filed within 14 days of the mailing date of the final agency action requesting an adjudicative proceeding, unless a longer date is specified in writing in the final agency action or required by statute, rule, or contract. In the event an appeal is not filed in the applicable time period, the final Trust Lands Administration action shall become unappealable. The petition for an adjudicative proceeding shall be filed according to the following requirements:

(a) the petition shall be filed at the office of the director pursuant to R850-8-800.

(b) the petition shall state:

i) all facts upon which the petition is based;

ii) any statute, rule, contract provision, or board policy

which the final agency action is alleged to violate;

iii) the nature of the violation of the final agency action with the statute, rule, contractual provision or board policy, and the injury that is specific to the petitioner arising from the final agency action. If the injury identified by the petition is not peculiar to the petitioner as a result of the action, the board will decline to hear the appeal; and

iv) the relief requested.

3. Upon receipt of a petition, the director shall initially stay any further actions with respect to the matter for which the adjudicative proceeding is being sought by the petitioner. The board, in its discretion, may lift such suspension or condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

4. Upon receipt the director shall promptly mail the petition to the board.

5. When the date of mailing is at least ten days prior to a regularly scheduled board meeting, the board may consider the petition at that meeting. In the event that the date of mailing is within ten days of a regularly scheduled board meeting, the petition will be considered at the next succeeding board meeting.

6. In its initial consideration of any petition, the board may schedule the petition for hearing at a future date, make determinations concerning whether the adjudicative proceeding will be formal or informal, address procedural matters such as stays, discovery, etc., or hear the matter on the merits.

7. The board may decline to conduct adjudicative proceedings in response to a petition, in which case the petitioner shall be entitled to judicial review pursuant to Section 63G-4-402.

R850-8-1100. Designation of Adjudicative Proceedings as Formal or Informal.

1. The board, in its discretion, shall determine whether to conduct an adjudicative proceeding formally or informally.

2. Any time before a final order is issued in any adjudicative proceeding, the board may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding does not unfairly prejudice the rights of any party.

R850-8-1200. Procedures for Informal Adjudicative Proceedings.

1. The Trust Lands Administration may, but is not required, to file an answer or other pleading responsive to the allegations contained in the petition.

2. The parties to the proceeding shall be permitted to testify, present evidence, and comment on the issues.

3. Hearings will be held only after timely notice to all parties.

4. Discovery is prohibited, but, the board may issue subpoenas or other orders to compel production of necessary evidence.

5. All parties shall have access to information contained in the Trust Lands Administration's files and to all materials and information gathered in any investigation, to the extent permitted by law.

6. Intervention shall be in accordance with R850-8-1400.

7. All hearings shall be open to all parties.

8. Within a reasonable time after the close of an informal adjudicative proceeding, the board shall issue a signed order in writing that states the following:

(a) the decision, and when appropriate, the reasons for the decision;

(b) a notice of any right of judicial review available to the parties;

(c) the time limits for filing an appeal.

9. A copy of the board's order shall be promptly mailed to each of the parties.

10. Recordation of Hearing.

(a) The board may record or have a transcript prepared of any hearing.

(b) Any party, at its own expense may record or have a reporter approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

R850-8-1300. Procedures for Formal Adjudicative Proceedings.

1. An original and ten copies of all papers permitted or required to be filed shall be filed with the Trust Lands Administration and one copy shall be sent by mail to each party.

2. In addition to the final agency action, and the petition for the appeal of the final agency action, additional motions may be submitted for the board's decision on either written or oral argument and the filing of affidavits in support or contravention may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

3. The board may permit or require pleadings in addition to the final agency action and the appeal of the final agency action.

4. Upon motion of a party, and for good cause shown, the board may authorize discovery against another party, including the Trust Lands Administration, in the manner provided by the Utah Rules of Civil Procedure.

5. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the board when requested by any party, or may be issued upon its own motion.

6. Hearing procedure.

(a) The board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On its own motion or upon objection by a party, the board:

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

ii) shall exclude evidence privileged in the courts of Utah;

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

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

(c) The board may not exclude evidence solely because it is hearsay.

(d) The board shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The board may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

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

(g) The hearing shall be recorded at the board's expense.

(h) Any party, at his own expense, may have a person approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(j) This section does not preclude the presiding officer

from taking appropriate measures necessary to preserve the integrity of the hearing.

7. Intervention shall be in accordance with R850-8-1400.

8. Orders.

(a) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the board, the board shall sign and issue an order that includes:

i) a statement of the board's findings of fact based exclusively on the evidence of record in the adjudicative proceedings, or on facts officially noted;

ii) a statement of the board's conclusions of law;

iii) a statement of the reasons for the board's decision;

iv) a statement of any relief ordered by the board;

v) a notice of any right to judicial review of the order available to aggrieved parties;

vi) the time limits applicable to any review (or reconsideration).

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

(c) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under Utah Rules of Evidence.

(d) This section does not preclude the board from issuing interim orders to:

i) notify the parties of further hearings;

ii) notify the parties of provisional rulings on a portion of the issues presented; or

iii) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

R850-8-1400. Informal or Formal Adjudicative Proceedings - Intervention.

1. Any person not a party may file a signed, written petition to intervene in an adjudicative proceeding with the Trust Lands Administration.

2. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

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

(b) a statement of the relief that the petitioner seeks from the Trust Lands Administration.

3. The board shall grant a petition for intervention if it determines that:

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

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

4.

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

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

(c) the board may impose the conditions at any time after the intervention.

R850-8-1500. Formal Adjudicative Proceeding - Designation of Hearing Examiner.

1. The board may in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusion of law to the board. Any member of the board, or any person designated by the board may serve as a hearing examiner, other than an employee of the Trust Lands Administration.

2. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues: to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiners's authority is limited the hearing examiner will be vested general authority to conduct hearings in an orderly and judicial matter, including authority to:

(a) summon and subpoena witnesses;

(b) administer oaths, call and question witnesses;

(c) require the production of records, books and documents;

(d) take such other action in connection with the hearing as may be prescribed by the board.

(e) make evidentiary rulings and propose findings of fact and conclusions of law.

3. Conduct of hearings.

Except as limited by the board's order, hearings will be conducted under the same rules and in the same manner as hearings before the board.

4. Rulings, Findings, and Conclusions of the hearing examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R850-8-1300(8). All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the board.

R850-8-1600. Default.

1. The board may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding: or

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after being given proper notice.

2. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.

(a) A defaulted party may seek to have the Trust Lands Administration set aside the default order, and any order in the adjudicative order, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default and any subsequent order shall be made to the board.

4.

(a) In an adjudicative proceeding that has other parties besides the party in default, the board shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default.

R850-8-1700. Reconsideration and Modification of Existing Orders.

1. Any person affected by a final order or decision of the board may file a petition for reconsideration within 20 days after the date the order was issued.

2. A copy of the request for reconsideration shall be sent

by mail to each party by the person making the request.

3. The petition for reconsideration will set forth specifically the particulars in which it is claimed the board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.

4. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition with the director at any time prior to the hearing at which the petition will be considered by the board. Such responses will be served on the petitioner at or before the hearing.

5. The board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the board within such time, the petition will be deemed to be denied. The board may set a time for a hearing on said petition or may summarily grant or deny the petition.

6. The filing of the request is not a prerequisite for seeking judicial review of the order.

R850-8-1800. Judicial Review - Exhaustion of Administrative Remedies.

1. A party aggrieved may obtain judicial review of a final order issued in an adjudicative proceeding, except where judicial review is expressly prohibited by statute.

2. A party may seek judicial review only after exhausting all administrative remedies available, except that a party seeking judicial review need not exhaust administrative remedies if any statute or rule states that exhaustion is not required.

3.

(a) A party shall file a petition for judicial review of a final order issued by the board within 30 days after the date that the order is issued or considered issued.

(b) The petition shall name the Trust Lands Administration and all other appropriate parties as respondents.

R850-8-1900. Judicial Review.

To seek judicial review of a final board action resulting from informal or formal adjudicative proceedings, the petitioner shall file a petition for review of a board order with the appropriate court in the manner required by Sections 63G-4-402 and 63G-4-403, as appropriate.

R850-8-2000. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

1. The board may grant a stay of its order or other temporary remedy during the pendency of judicial review if it determines a stay would be in the interest of justice and would not unduly harm the beneficiaries. The board, in its discretion, may condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

2. If the board denies a stay or denies other temporary remedies requested by a party, the board's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

R850-8-2100. Emergency Adjudicative Proceedings.

1. The board may issue an order on an emergency basis without complying with the requirements of this section if:

(a) the facts known by the board or presented to the board show that an immediate and significant danger to the public health, safety, or welfare exists; or

(b) an immediate and irreparable threat to the beneficiaries exists; and

(c) the threat requires immediate action by the board.

2. In issuing its emergency order, the board shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare; or

(b) the immediate and irreparable threat to the beneficiaries; and

(c) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(d) give immediate notice to the persons who are required to comply with the order.

3. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the board shall commence an adjudicative proceeding in accordance with the other provisions of this section.

R850-8-2200. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the board.

R850-8-2300. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R850-8-2400. Time Periods.

Nothing in this section shall be interpreted to restrict the director, or, the board from lengthening or shortening any time period prescribed herein.

KEY: administrative procedure, public petitions, right of petition, adjudicative proceedings
December 22, 2011 53C-1-204(3)
Notice of Continuation October 18, 2011 53C-1-204(10)(c)
53C-1-304

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and

statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:
Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West

Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

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

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

(i) Internal Audit;

(ii) Appeals;

(iii) Economic and Statistical; and

(iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

(i) Administration;

(ii) Taxpayer Services;

(iii) Motor Vehicle;

(iv) Auditing;

(v) Property Tax;

(vi) Processing; and

(vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the

following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the

period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(ii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iii) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile

number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10

days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the

taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a

minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the

commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;
(b) DHL Next Day 10:30 a.m.;
(c) DHL Next Day 12:00 p.m.;
(d) DHL DHL Next Day 3:00 p.m.; and
(e) DHL 2nd Day Service;
(2) Federal Express (FedEx):
(a) FedEx Priority Overnight;
(b) FedEx Standard Overnight;
(c) FedEx 2 Day;
(d) FedEx International Priority; and
(e) FedEx International First; and
(3) United Parcel Service (UPS):
(a) UPS Next Day Air;
(b) UPS Next Day Air Saver;
(c) UPS 2nd Day Air;
(c) UPS 2nd Day Air A.M.;
(d) UPS Worldwide Express Plus; and
(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:
(i) R861-1A-9, Tax Commission as Board of Equalization;
(ii) R861-1A-11, Appeal of Corrective Action;
(iii) R861-1A-20, Time of Appeal;
(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;
(v) R861-1A-23, Designation of Adjudicative Proceedings;
(vi) R861-1A-24, Formal Adjudicative Proceedings;
(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;
(viii) R861-1A-27, Discovery;
(ix) R861-1A-28, Evidence in Adjudicative Proceedings;
(x) R861-1A-29, Decision, Orders, and Reconsideration;
(xi) R861-1A-30, Ex Parte Communications;
(xii) R861-1A-31, Declaratory Orders;
(xiii) R861-1A-32, Mediation Process;
(xiv) R861-1A-33, Settlement Agreements;
(xv) R861-1A-34, Private Letter Rulings;
(xvi) R861-1A-38, Class Actions;
(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and
(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;
(b) the names of each person present at the meeting;
(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;
(d) a record, by commissioner, of each vote taken by the commission;
(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and
(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and
(b) a complete and unedited record of the meeting.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
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Notice of Continuation March 20, 2007 **41-1a-209**
52-4-207
59-1-205
59-1-207
59-1-210
59-1-301
59-1-302.1
59-1-304
59-1-401
59-1-403
59-1-404
59-1-405
59-1-501
59-1-502.5
59-1-602
59-1-611
59-1-705
59-1-706
59-1-1004
59-1-1404
59-7-505
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
59-12-114
59-12-118
59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63G-3-301
63G-4-102
76-8-502
76-8-503
59-2-701
63G-4-201
63G-4-202
63G-4-203
63G-4-204
63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R865. Tax Commission, Auditing.
R865-4D. Special Fuel Tax.
R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,

2. intrastate operators of trucks and buses, and

3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

R865-4D-2. Refund Procedures for Special Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Section 59-13-301.

(1)(a) "Off-highway," for purposes of determining whether special fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

(b) "Off-highway" does not include:

(i) a parking lot that the public may use; or

(ii) the curbside of a highway.

(2) Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating special fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

(3) Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total special fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

(a) concrete mixer trucks - 20 percent;

(b) garbage trucks with trash compactor - 20 percent;

(c) vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:

(i) 3/4 gallon per 1000 gallons pumped; or

(ii) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.

(d) Any other method of calculating the amount of special fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

(4) Allowances provided for in Subsections (2) and (3) will be recognized only if adequate records are maintained to support the amount claimed.

(5) In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in Subsection will be refunded to the extent total gallons allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

(6) Special fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

(7) The following documentation must accompany a refund request for special fuel tax paid on special fuel used in a vehicle off-highway:

(a) evidence that clearly indicates that the special fuel was used in a vehicle off-highway;

(b)(i) the specific address of the off-highway use with a description that is adequate to verify that the location is off-highway; or

(ii) if a specific address is not available, a description of the off-highway location that is adequate to verify that the location is off-highway;

(c) a description of how the vehicle was used off-highway;

(d)(i) the date of the off-highway use; and

(ii) if the claimed use is idling while off-highway, the amount of time the vehicle was idling at that location;

(e) the amount of fuel the vehicle used off-highway; and

(f) the make and model, weight, and miles per gallon of the vehicle used off-highway.

(8) Special fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;

2. place of sale;

3. date of sale;

4. name and address of purchaser;

5. fuel type;

6. number of gallons sold;

7. unit number or other vehicle identification if delivered into a motor vehicle;

8. type of container delivered into if not a motor vehicle;

9. invoice number; and

10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

a) name and address of the retail dealer;

b) date of sale;

c) amount of propane sold; and

d) purchaser's name.

E. A retail dealer that sells propane or electricity exempt from sales tax shall retain the following information for each exempt sale:

1. the make, year, and license number of the vehicle;

2. the name and address of the purchaser; and

3. the quantity (e.g., number of gallons) sold.

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that

the dyed diesel fuel will be used for purposes other than to operate a motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;
4. total trip miles;
5. Utah miles;
6. fuel purchased or drawn from bulk storage for the vehicle; and
7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;
2. historical filing information;
3. industry data;
4. a flat or standard average mpg figure.

a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.

(1) Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Utah Application for Fuel Tax Refund, form TC-116, to the commission.

(2) A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

(a) name of the government entity making the purchase;

(b) license plate number of the government vehicle for which the special fuel is purchased;

(c) invoice date;

(d) invoice number;

(e) vendor;

(f) vendor location;

(g) product description;

(h) number of gallons purchased; and

(i) amount of state special fuel tax paid.

(3) Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.

A. Definitions.

1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed special fuel suppliers shall elect to calculate the tax liability on the Utah Special Fuel Supplier Tax Return on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-IP Petroleum Measurement Tables.

D. All transactions, such as purchases, sales, or deductions, reported on the Special Fuel Supplier Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect July 1, 1997.

R865-4D-22. Reduction in Special Fuel Tax for Suppliers Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-301.

A. The purpose of this rule is to provide procedures for administering the reduction of special fuel tax authorized under Section 59-13-301.

B. The reduction shall be in the form of a refund.
C. The refund shall be available only for special fuel:
1. delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and
2. for which Utah special fuel tax has been paid.
D. The refund shall be available to a special fuel supplier that is licensed as a distributor with the Office of the Navajo Tax Commission.
E. The refund application may be filed on a monthly basis.
F. A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.
G. Original records supporting the refund claim must be maintained by the supplier for three years following the year of refund. These records include:
1. proof of payment of Utah special fuel tax;
2. proof of payment of Navajo Nation fuel tax; and
3. documentation that the special fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation.

R865-4D-23. State Participation in the International Fuel Tax Agreement Pursuant to Utah Code Ann. Section 59-13-501.

A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.
B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.
C. This rule incorporates by reference the 2003 edition of the IFTA:
1. Articles of Agreement;
2. Procedures Manual; and
3. Audit Manual.

R865-4D-24. Special Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-302.

(1) The holder of a license issued under Section 59-13-302 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 special fuel 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 special fuel tax license that has been determined invalid under Subsection (3).
(5) The holder of a license issued under Section 59-13-302 shall be responsible for any special fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

KEY: taxation, fuel, special fuel
December 22, 2011 **59-13-102**
Notice of Continuation February 26, 2007 **59-13-301**
59-13-302
59-13-303
59-13-304
59-13-305
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59-13-313
59-13-501

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home

office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Allocation" means the assignment of nonbusiness income to a particular state.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Base of operations" means the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the taxpayer or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other function necessary to the exercise of his trade or profession at some other point or points.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer, or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Business income" means income of any type or class, and from any activity, that meets the relationship described in Subsection (2)(b), the transactional test, or Subsection (2)(c),

the functional test. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income is of no aid in determining whether income is business or nonbusiness income.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) "Employee" means an:

(i) officer of a corporation; or

(ii) individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(h) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Subsection (11).

(i) "Nonbusiness income" means all income other than business income.

(j) "Place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(k) "Taxpayer" means a corporation as defined in Section 59-7-101.

(l) "To contribute materially" includes being used operationally in the taxpayer's trade or business. Whether property contributes materially is not determined by reference to the property's value or percentage of use. If an item of property contributes materially to the taxpayer's trade or business, the attributes, rights, or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

(m) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Utah.

(2) Business and Nonbusiness Income.

(a) Apportionment and Allocation. Section 59-7-303 requires that every item of income be classified as either business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(b) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within the state, the resulting income of the transaction or activity is business income for Utah purposes. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in this state.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted, or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, those activities do not satisfy the transactional test. The transactional test includes income from sales of inventory, property held for sale to customers, and services commonly sold by the trade or business. The transactional test also includes income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(c) Functional Test. Business income also includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(i) The following definitions apply to this Subsection (2)(c).

(A) "Acquisition" means the act of obtaining an interest in property.

(B) "Disposition" means the act, or the power, of relinquishing or transferring an interest in or control over property to another, either in whole or in part.

(C) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner that materially contributes to the production of business income.

(D) "Management" means the oversight, direction, or control, whether directly or by delegation, of the property for the use or benefit of the trade or business.

(E) "Property" includes an interest in, control over, or use of property, whether the interest is held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income.

(ii) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially

contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within the state. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time, generally five years, or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, has lost its character as a business asset and is not subject to this subsection. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(iii) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income if the property is or was used in the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to Subsection (2)(c)(iii).

(B) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iv) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(v) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this state.

(vi) If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to this state, or includes the original cost in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(vii) Application of the functional test is generally unaffected by the form of the property, whether tangible or intangible, real or personal. Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component of the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this Subsection (2)(c)(vii).

(B) While apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, that is, the same unitary business, establishment of that relationship is not the exclusive basis for concluding that the income is subject to apportionment.

(C) It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.

(d) Relationship of Transactional Test and Functional Tests to the United States Constitution.

(i) The due process clause and the commerce clause of the United States Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extra-territorial state taxation afforded by these clauses is often described as the unitary business principle. The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted as least in part in the state.

(ii) The unitary business conducted in this state includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity, in the case of the transactional test, or the property, in the case of the functional test, to be tied to the same trade or business that is conducted within the state. Determination of the scope of the unitary business conducted in the state is without regard to the extent to which this state requires or permits combined reporting.

(e) Business and Nonbusiness Income Application of Definitions.

(i) Rents From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under Subsection (8)(a)(i). Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this subsection.

(ii) Gains or Losses From Sales of Assets. Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income or it was previously included in the property factor and later removed from the property factor before its sale, exchange, or other disposition, the gain or loss constitutes nonbusiness income. See Subsection (8)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends were received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(v) Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or

copyright is an integral, functional, or operational component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(vi) Proration of Deductions. In most cases, an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to the business incomes of more than one trade or business or several items of nonbusiness income. In those cases, the deduction shall be prorated among those trades or businesses and those items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(f)(i) A schedule must be submitted with the return showing the:

(A) gross income from each class of income being allocated;

(B) amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) total amount of the applicable expenses for each income class; and

(D) net income of each income class.

(ii) The schedule shall indicate items of income and expenses allocated both to the state and outside the state.

(g) Year to Year Consistency. In filing returns with the state, if the taxpayer departs from or modifies the manner of prorating any deduction used in returns for prior years in a material way, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(h) State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of any material variance.

(3) Unitary Business.

(a) Unitary Business Principle.

(i) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up of either separate parts of a single business entity or a group of business entities related through common ownership that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in this state that comes from being part of a unitary business conducted both within and without the state is what provides the constitutional due process definite link and minimum connection necessary for the state to apportion business income of the unitary business, even if that income arises in part from activities conducted outside the state. The business income of the unitary business is then apportioned to this state using an apportionment percentage provided by Section 59-7-311. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(ii) Constitutional Requirement for a Unitary Business. The sharing or exchange of value described in Subsection (3)(a)(i) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In this state, the unitary business principle shall be applied to the fullest extent allowed by the United States Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of those activities or entities would not be allowed by the United States Constitution.

(iii) Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one unitary business. In those cases, it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(iv) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a group of business entities related through common ownership, as defined in Section 59-7-101.

(b) Determination of a Unitary Business.

(i) A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 US 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular characteristic of a business operation may be suggestive of one or more of the factors mentioned above.

(ii) Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

(A) Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(I) Sales, Exchanges, or Transfers. Sales, exchanges, or transfers (collectively "sales") of products, services, and intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to affect the intercompany sales, because those sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(II) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when the marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common

identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. That activity, however, is relevant to determining the existence of economies of scale and centralization of management.

(III) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(IV) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

(V) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings and is significant to each entity's operations or sales, provides evidence of functional integration.

(VI) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending that serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(B) Centralization of Management. Centralization of management exists when directors, officers, and other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role may be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(I) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(II) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(C) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(I) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(II) Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market provides evidence of economies of scale.

(c) Indicators of a Unitary Business.

(i) Business activities that are in the same general line of business generally constitute a single unitary business, as for example, a multistate grocery chain.

(ii) Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(iii) Business activities that might otherwise be considered as part of more than one unitary business may constitute one unitary business when the factors outlined in Subsection (3)(b) are present. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business the normal matters a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(4) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) If a taxpayer makes an election to calculate its apportionment fraction under Subsection 59-7-311(2)(c) and one or more of the factors listed in Subsection 59-7-311(2)(c)(i)

is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer makes an election to double weight the sales factor under Subsection 59-7-311(2)(d) and one or more of the factors listed in Subsection 59-7-311(2)(d)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in subsection 59-7-311(2)(d)(i), and dividing that sum by the denominator indicated in Subsection 59-7-311(2)(d)(ii), reduced by the sum of one if the property factor is missing, one if the payroll factor is missing, and two if the sales factor is missing.

(C) For a taxable year that begins on or after January 1, 2011, but begins on or before December 31, 2011, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(a)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(a)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(a)(ii), reduced by the number of missing factors.

(D) For a taxable year that begins on or after January 1, 2012, but begins on or before December 31, 2012, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(b)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(b)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(b)(ii), reduced by the number of missing factors.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(5) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(6) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302, other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(7) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (8), the payroll factor, see Subsection (9), and the sales factor, see Subsection (10) of the trade or business of the taxpayer. For exceptions see Subsection (11).

(8) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (8)(g).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax

period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time, normally five years, during which the property is no longer held for use in the trade or business.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Property Factor Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (11)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property

was as follows:

TABLE

January	$2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (8)(g).

(9) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(d) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(e)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(f) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(g) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Subsection (9). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(h) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(10) Sales Factor. In General.

(a) Section 59-7-302 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (11)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (11)(d).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (10)(e) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f)(i) Sales Other than Sales of Tangible Personal Property in this State.

(ii) In general, Subsections 59-7-319(2) through (7) provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government).

(g) Receipts from the Performance of Services.

(i) Under Subsection 59-7-319(3), gross receipts from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the "benefit of the service" approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

(ii) For businesses engaged in certain industries, specific sourcing rules and guidelines that address the attribution of gross receipts from the performance of a service have been adopted. See Subsection (11)(b).

(iii) The benefit from performance of a service is in this state if any of the following conditions are met:

(A) The service relates to tangible personal property and is performed at a purchaser's location in this state.

(B) The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.

(C) The service is provided to an individual who is physically present in this state at the time the service is received.

(D) The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser's business in this state.

(E) The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

(iv) If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider's business records at the time the service was provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

(A) The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.

(B) If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the purchaser's billing address is in this state.

(C) If the state of the purchaser's billing address cannot be determined, the receipt shall be included in the sales factor in this state.

(v) The term, "gross receipt from the performance of a service" applies to each individual sales transaction, and each sales transaction is considered a discrete transaction for purposes of determining whether the purchaser of the service receives a greater benefit of the service in this state than in any other state.

(vi) In determining whether the greater benefit from the performance of a service is received in this state, the benefit of the service in this state must be compared to the benefit of the service received in each individual state in which any benefit of the service is received, i.e., the benefit of the service received in Utah is not compared to the benefit of the service received in all other states combined.

(vii) In the context of a combined report, the sale of services between members of a unitary group included in a combined report shall be excluded from the combined report sales factor.

(viii) The following examples are provided to illustrate the application of Utah law in regard to receipts from the performance of a service:

(A) A company headquartered and primarily conducting business in Utah contracts for general accounting services with an accounting firm located in another state. The receipts for the accounting service are sourced to Utah regardless of where the services are performed, since the greater benefit of the services is received in this state.

(B) A Utah retailer hires a California agency to develop an advertising campaign targeting its Utah customers. The receipts for the advertising services are sourced to Utah regardless of where the services are actually performed.

(C) A multistate company hires a Colorado firm to perform an appraisal of its business properties in Utah and Colorado. The company has several locations in Utah. However, the headquarters of the company is in Colorado and the value of its properties located in Colorado exceed the value of its properties in Utah. The appraisal fee is not broken down by location of the assets or properties of the company. Use of the property values for each state to determine where the greater benefit of the appraisal services occurred is a reasonable method to determine where the appraisal service fees should be sourced and the service would be sourced to Colorado. However, if the appraisal fees are broken out separately for Colorado and Utah properties or the billing information by state is known, the appraisal fees pertaining to the Utah properties are sourced to Utah and the appraisal fees pertaining to the Colorado properties are sourced to Colorado.

(D) An Internet/cable television service provider provides services to purchasers in Utah as well as other surrounding states. As all of the benefit from the services provided to Utah purchasers is received at residences or business locations in Utah, the receipts from the services provided to Utah purchasers are sourced to Utah.

(E) Data processing services are performed for a company conducting interstate business. The services relate to computer systems that are mainly located in Utah although a few terminals are spread over several other states. Since the data processing services relate to the computer systems that are mainly located in Utah, the greater benefit of the service is considered to be received in Utah and the receipts from the services are sourced to Utah regardless of where the services are actually performed. The location of data processing equipment associated with the data processing services is a reasonable method of sourcing receipts from those services.

(F) Engineering services are performed in connection with a property being constructed in Utah. Since all of the benefit of the service is received in Utah where the construction takes place, the receipts from the engineering services are sourced to Utah regardless of where the actual engineering services are performed.

(G) A California law firm is retained to represent multiple plaintiffs in a class action lawsuit filed against a Utah corporation in a Utah court. Receipts received by the firm for the legal services are sourced to Utah notwithstanding the fact that some of the services were performed outside Utah. The greater benefit of the services is received in Utah since the lawsuit was filed against a Utah corporation in a Utah court.

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

(I) A car rental agency rents a vehicle that is picked up from and returned to one of its business locations in Utah. The receipts from the rental are sourced to Utah regardless of whether the vehicle leaves this state for the duration of the rental period.

(11) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;

(ii) the exclusion of any one or more of the factors;

(iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) For businesses engaged in one or more of the following industries, specific statutes, rules, and guidelines have been adopted:

(i) airlines see Sections 59-7-312, 59-7-315, and 59-7-317;

(ii) financial institutions see rule R865-6F-32;

(iii) long term construction contractors see rule R865-6F-16;

(iv) publishing companies see rule R865-6F-31;

(v) railroads see rule R865-6F-29;

(vi) registered securities or commodities brokers and dealers see rule R865-6F-36;

(vii) telecommunications companies see rule R865-6F-33; and

(viii) trucking companies see rule R865-6F-19;and

(ix) businesses or affiliates of businesses providing services to a regulated investment company see Section 59-7-319.

(c) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under Subsection (8)(f)(i) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by

the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(d) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where intangible property generates business income and the state in which that intangible property is being used can be determined, that income is included in the denominator of the sales factor and, if and to the extent that property is used in this state, in the numerator of the sales factor as well. For example, usually the state in which the intangible property is being used can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property.

(A) Where intangible property generates business income and the state in which that intangible property is being used cannot be determined, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (11)(d)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (11)(d)(iv). This Subsection (11)(d)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (11)(d)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (11)(d)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this Subsection (11)(d)(iv)(D), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(e) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(f) Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

(1) It is the policy of the commission, in matters involving the determination of income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances the federal and state statutes differ, and as a result the federal rulings, regulations, and decisions may not be followed. Furthermore, in some instances, the commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

(2) The items of major importance ordinarily allowed in conformity with federal requirements are:

(a) depreciation,
(b) depletion,
(c) exploration and development expenses,
(d) intangible drilling costs,
(e) accounting methods and periods, and
(f) Subpart F income.

(3) The following are the major items that require different treatment under the state and federal statutes:

(a) combined reporting,
(b) consolidated returns,
(c) dividends received deduction,
(d) municipal bond interest,
(e) capital loss deduction,
(f) loss carry-overs and carry-backs, and
(g) gross-up on foreign dividends.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-

completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

(6) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (6)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (6)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (6)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise,

or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

(d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after

December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 7, 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 7, and Title 63M, Chapter 1 against Utah corporate franchise tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-416.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

(A) that is transported outside of the enterprise zone; and

(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.

(g) "Taxpayer" means the person claiming the tax credits in section 63M-1-413.

(h) "Transfer" pursuant to Section 63M-1-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(i) "Unitary group" is as defined in Section 59-7-101.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone; or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection (3)(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 (3)(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) A business entity that conducts non-retail operations and is engaged in retail trade is primarily engaged in retail trade if the retail trade operations constitute more than 50% of the business entity's total operations.

(5) 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.

(6) Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

(7) 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.

(8) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9),and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall

be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to

transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(11)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial

domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through(vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository

institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation

property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the purchaser of the services receives a greater benefit of the service in this state than in any other state.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not

less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commission to use, or the commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(10) and (11).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or

would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the commission to use a different method, or the commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commission or by the taxpayer when approved in writing by the commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commission to use a different method, or the commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone

service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9) and the sales factor in accordance with R865-6F-8(10).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in commission rule R865-6F-8(8).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

(i) for which the broker or dealer does not take title; and

(ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost

incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

R865-6F-39. Definitions Related to Captive Real Estate Investment Trust and Foreign Real Estate Investment Trust Pursuant to Utah Code Ann. Section 59-7-101.

The following definitions apply to the definitions of captive real estate investment trust and foreign real estate investment trust in Section 59-7-101.

(1) "Cash or cash equivalents" means currency and coins, bank balances, negotiable money orders, checks, and highly liquid investments that can easily be converted into cash, such as treasury bills, certificates of deposit, marketable securities, and negotiable financial instruments.

(2) "Established securities market" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(2) (2007), which is adopted and incorporated by reference.

(3) "Listed Australian property trust" means:

(a) an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; and

(b) an entity organized as a trust, provided that an entity listed in Subsection (3)(a) owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of that trust.

(4) "Regularly traded" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(4) (2007), which is adopted and incorporated by reference.

R865-6F-40. Foreign Operating Company Subtraction from Unadjusted Income Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-106.

(1) The activities of a partnership interest are taken into account in determining whether a corporation qualifies as a foreign operating company and calculating any adjustment for which the corporate partner that is a foreign operating company is eligible.

(a) Partnership activities are attributed to the corporation to the extent of the corporation's ownership interest in the partnership.

(b) The character of each class or type of partnership income passes through to the corporate partner. Accordingly, a corporate partner that is a foreign operating company may not make a subtraction from unadjusted income as a foreign operating company for partnership income generated from intangible property and assets held for investment and not from a regular business trading activity.

(2) Prior to determining the foreign operating company subtraction, a foreign operating company that is a member of a unitary group shall eliminate a transaction between the foreign operating company and a partnership held directly or indirectly by a member of the same unitary group to the extent of the interest the foreign operating company holds in the partnership.

KEY: taxation, franchises, historic preservation, trucking industries

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9-2-401 through 9-2-415
16-10a-1501 through 16-10a-1533
53B-8a-112
59-1-1301 through 59-1-1309
59-6-102
59-7
59-7-101
59-7-102
59-7-104 through 59-7-106
59-7-108
59-7-109
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59-7-112
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59-7-608
59-7-701
59-7-703
59-10-603
59-13-202
59-13-301

63M-1
63M-1-401 through 63M-1-416

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136.

(1) 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.

(2) 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 Section 59-10-136.

(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.

R865-9I-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.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(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 59-1-1406.

(1) 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.

(2) 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 records shall be made available to an authorized agent of the 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.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 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 (3)(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 (3)(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) A business entity that conducts non-retail operations and is engaged in retail trade is primarily engaged in retail trade if the retail trade operations constitute more than 50% of the business entity's total operations.

(5) 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.

(6) 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.

(7) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-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.

R865-9I-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
December 22, 2011 **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
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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.
R865-13G. Motor Fuel Tax.
R865-13G-1. Carrier's Reports of Motor Fuel Deliveries Pursuant to Utah Code Ann. Section 59-13-208.

A. Carrier means every individual, firm, partnership, group, or corporation importing or transporting motor fuels into the state of Utah by means of conveyance, whether gratuitously, for hire, or otherwise. It includes both common and private carriers, as those terms are commonly used.

B. Every carrier delivering motor fuels, as defined in Utah Code Ann. Section 59-13-102, within this state must submit written reports of all deliveries from outside Utah. The Tax Commission will furnish forms and the forms must be submitted on or before the last day of each month to cover fuel imported during the previous month.

R865-13G-3. Export Sales Pursuant to Utah Code Ann. Section 59-13-201.

A. Sales and deliveries of motor fuel, by a Utah licensed distributor are exempt, provided one of the following requirements is met:

1. delivery is made to a point outside this state by a common or contract carrier to a Utah licensed distributor;

2. delivery is made to a point outside this state in a vehicle owned and operated by a Utah licensed distributor;

3. delivery is made at a point in or outside this state to a distributor or importer licensed in another state for use or sale in that state; or

4. delivery is made, in a drum or similar container, at a point in the state of Utah to a person for use in another state.

B. Each export sale must be supported by records that disclose the following information.

1. If sold to a licensed distributor, records shall show the date exported, the consignee or purchaser, and the destination of the motor fuel.

2. If the exporter is not a licensed distributor, credit must be claimed through a licensed distributor and the following requirements must be met:

(a) the exporter must furnish a licensed distributor with a completed Form TC-112 Proof of Exportation -- Motor Fuel, showing the date, the purchaser or consignee, and the destination of the motor fuel;

(b) the licensed distributor shall make note of the date this information is furnished and make claim for credit due on the motor fuel return for the same period in which the Form TC-112 was received;

(c) claims for credit or refund must be made within 180 days from date of export, whether the claim is made through a licensed distributor or directly to the Tax Commission; all persons authorized to do so must file a claim directly with the Tax Commission; and

C. motor fuel delivered into the fuel tank or auxiliary fuel tank of any vehicle owned or operated by a resident or a nonresident of this state is taxable.

R865-13G-5. Sales to Licensed Distributors Pursuant to Utah Code Ann. Sections 59-13-203.1 and 59-13-204.

(1)(a) A motor fuel dealer engaged in the business of selling motor fuel for resale in wholesale quantities may elect to become a licensed distributor under the provisions of Sections 59-13-203.1 and 59-13-204.

(b) License and bond requirements contained in Section 59-13-203.1 must be fulfilled when a dealer makes this election.

(2) A licensed distributor wishing to purchase motor fuel without payment of tax at the time of purchase must furnish each of the distributor's suppliers with a signed letter containing the following information:

(a) a statement advising that the purchaser is the holder of a valid motor fuel tax license;

(b) the number of the license; and

(c) a statement that the purchaser will assume the responsibility and liability for the payment of motor fuel tax on all future purchases of motor fuel.

(3) The letter from the purchaser must be retained by the seller as part of the seller's permanent records.

R865-13G-6. Product Considered Exempt Pursuant to Utah Code Ann. Section 59-13-210.

A. Volatile or inflammable liquids which qualify as motor fuels under Utah laws but which in their present state are not usable in internal combustion engines and in fact are not used as motor fuels in internal combustion engines are exempt if sold in bulk quantities of not less than 1,000 gallons at each delivery.

B. The licensed motor fuel importer, refiner, or licensed distributor shall submit specifications and other related data to the Tax Commission. If the Tax Commission agrees that the product is not a taxable motor fuel in its current state, it may be sold exempt provided it is determined that all of the product sold will be used for other than use in an internal combustion engine.

C. The Tax Commission may set reporting and verification requirements for nontaxable products if additional sales are made to the same purchaser for identical use. Failure to submit reports, verification, or specifications upon request by the Tax Commission will result in the product losing its exempt status.

D. Sellers and purchasers of the exempt product must maintain records to show the use of the product together with laboratory specifications to indicate its quality. These records must be available for audit by the Tax Commission.

E. Any exempt products subsequently sold in their original state for use as a motor fuel, or to be blended with other products to be used as a motor fuel, will be subject to the motor fuel tax at the time of sale.

R865-13G-8. Nonhighway Agricultural Use Pursuant to Utah Code Ann. Section 59-13-202.

A. Every person who purchases motor fuel within this state for the operation of farm engines, including self-propelled farm machinery, used solely for nonhighway agricultural purposes, is entitled to a refund of the Utah Motor Fuel Tax paid thereon.

1. Agricultural purposes relate to the cultivation of the soil for the production of crops, including: vegetables, sod crops, grains, feed crops, trees, fruits, nursery floral and ornamental stock, and other such products of the soil. The term also includes raising livestock and animals useful to man.

2. Refunds are limited to the person raising agricultural products for resale or performing custom agricultural work using nonhighway farm equipment. It is further limited to persons engaged in commercial farming activities rather than those engaged in a hobby or farming for personal use.

3. Fuel used in the spraying of crops by airplanes does not ordinarily qualify for refund since aviation fuel tax rather than motor fuel tax normally applies to the sale of this fuel.

R865-13G-9. Solid Hydrocarbon Motor Fuel Exemptions Pursuant to Utah Code Ann. Section 59-13-201.

A. Motor fuels refined in Utah from solid hydrocarbons located in Utah are exempt from the motor fuel tax. If any exempt product is blended into gasoline refined from oil or into gasohol produced by blending gasoline and alcohol, the resulting product will be exempt only to the extent of the exempt hydrocarbon fuel included in the final blended product.

1. For example, if the motor fuel produced from solid hydrocarbons is blended with product containing 90 percent motor fuel produced from oil, 10 percent of the total product will be exempt from the motor fuel tax. To the extent possible, the solid hydrocarbon exemption should be claimed by the

person refining or distilling the exempt product.

B. If the resulting blended motor fuel is exported from Utah or sold to a tax-exempt government agency, the exemption claimed as a result of the export or government sales must be reduced by the amount of exemption claimed for the motor fuel produced from solid hydrocarbons in Utah.

C. In order for this adjustment to be made in cases where the export or exempt sale is made by someone other than the refiner or blender, the invoice covering the sale of the fuel must designate the amount of exempt product included in the motor fuel sold. This must be shown whether sold to a licensed distributor or to an unlicensed distributor.

1. If the exempt, or partially exempt product is sold to a licensed distributor, the distributor must make the adjustment on the form used to claim credit for the government sale or the export.

2. If sold to an unlicensed distributor, the export form or government sale form submitted to a licensed distributor for a claim must contain a statement disclosing the amount of exempt motor fuel included.

3. If the records are insufficient to disclose the identity of the exempt purchaser on a direct basis, an adjustment shall be made multiplying the exempt product by a percentage factor representing the government and export sales portion of total motor fuel sales for the same period.

R865-13G-10. Exemption For Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201.

(1) Sales to an Indian tribe for its exclusive use, acting in its tribal capacity, are exempt from taxation. Sales to individual tribal members, to Indian businesses operating on or off tribal territory, or to other nontribal organizations for personal use, retail sales purposes, or distribution to third parties do not qualify for the exemption for sales to Indian tribes.

(2) Licensed distributors may claim the exemption on sales to government agencies by taking the deduction on their motor fuel tax return for the month in which the sales occurred.

(a) Nonlicensed distributors making qualifying sales to government agencies must obtain credit for the exemption through the return of the licensed distributor supplying them with the fuel for the sales.

(b) A licensed distributor shall support each sale claimed as a deduction by retaining a copy of the sales invoice. The sales invoice must be in proper form and must contain sufficient information to substantiate the exemption status of the sale according to this rule.

(3) The fuel tax exemption for motor fuel sold to the United States, this state, or a political subdivision of this state shall be administered in the form of a refund if the government entity purchases the motor fuel after the tax imposed by Title 59, Chapter 13, Part 2 was paid. For refund procedures, see rule R865-13G-13.

R865-13G-11. Consistent Basis for Motor Fuel Reporting Pursuant to Utah Code Ann. Section 59-13-204.

A. Definitions:

1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed distributors shall elect to calculate the tax liability on the Utah Motor Fuel Tax Returns on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any licensed distributor failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Requests for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. If the election is made to purchase under the net gallon basis, all invoices, bills of lading, and motor fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-IP Petroleum Measurement Tables.

D. All transactions such as purchases, sales, or deductions, reported on the Motor Fuel Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect January 1, 1992.

R865-13G-13. Refund of Motor Fuel Taxes Paid Pursuant to Utah Code Ann. Section 59-13-201.

(1) Governmental entities entitled to a refund for motor fuel taxes paid shall submit a completed Utah Application for Fuel Tax Refund, form TC-116, to the commission.

(2) A government entity shall retain the following records for each purchase of motor fuel for which a refund of taxes paid is claimed:

(a) name of the government entity making the purchase;

(b) license plate number of vehicle for which the motor fuel is purchased;

(c) invoice date;

(d) invoice number;

(e) supplier;

(f) vendor location;

(g) fuel type purchased;

(h) number of gallons purchased; and

(i) amount of state motor fuel tax paid.

(3) Original records supporting the refund claim must be maintained by the governmental entity for three years following the year of refund.

R865-13G-15. Reduction in Motor Fuel Tax for Distributors Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-201.

(1) The purpose of this rule is to provide procedures for administering the reduction of motor fuel tax authorized under Section 59-13-201.

(2) The reduction shall be in the form of a refund.

(3) The refund shall be available only for motor fuel:

(a) delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

(b) for which Utah motor fuel tax has been paid.

(4) The refund shall be available to a motor fuel distributor that is licensed as a distributor with the Office of the Navajo Tax Commission.

(5) The refund application may be filed on a monthly basis on the Utah Application for Fuel Tax Refund, form TC-116.

(6) Original records supporting the refund claim must be maintained by the distributor for three years following the year of refund. These records include:

(a) proof of payment of Utah motor fuel tax;

(b) proof of payment of Navajo Nation fuel tax;

(c) documentation that the motor fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

(d) a completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with the required schedules and manifests.

R865-13G-17. Motor Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-203.1.

(1) The holder of a license issued under Section 59-13-203.1 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 motor fuel 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 motor fuel tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-13-203.1 shall be responsible for any motor fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

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59-13-201
59-13-202
59-13-203.1
59-13-204
59-13-208
59-13-210
59-13-404

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-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.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;

(b) the address of the property; and
(c) the serial number of the property.
(3) 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-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 completecourses 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 completecourses 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 adjustmentsor 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.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, 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.

(3) 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.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) 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. 2012 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
11	71%
10	41%
09 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
11	90%
10	80%
09	68%
08	58%
07	48%
06	38%
05	27%
04 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
11	84%
10	68%
09	51%
08	35%
07 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
11	66%
10	50%
09	30%
08	15%
07	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
11	91%
10	82%
09	71%
08	63%
07	54%
06	46%
05	36%
04	26%
03 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 2012 percent good applies to 2012 models purchased in 2011.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
12	90%
11	71%
10	66%
09	60%
08	54%
07	49%
06	43%
05	38%
04	32%
03	27%
02	21%
01	15%
00	10%
99 and prior	4%

(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
11	93%
10	85%
09	76%
08	70%
07	63%
06	57%
05	50%
04	43%
03	33%
02	23%
01 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
11	93%
10	85%
09	76%
08	70%
07	63%
06	57%
05	50%
04	43%
03	33%
02	23%
01 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
11	94%
10	89%
09	81%
08	77%
07	72%
06	69%
05	64%
04	60%
03	53%
02	45%
01	36%
00	27%
99	19%
98 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
11	62%
10	46%
09	21%
08	9%
07 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) 2012 model equipment purchased in 2011 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
11	53%
10	50%
09	47%
08	44%
07	41%
06	38%
05	35%
04	32%
03	29%
02	26%
01	23%
00	19%
99	16%
98 and prior	12%

(n) Class 14 - Motor Homes.
(i) Taxable value is calculated by applying the percent good against the cost new.
(ii) The 2012 percent good applies to 2012 models purchased in 2011.
(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
12	90%
11	66%
10	62%
09	59%
08	56%
07	52%
06	49%
05	45%
04	42%
03	38%
02	35%
01	31%
00	28%
99	25%
98	21%
97	18%
96 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
11	47%
10	34%
09	24%
08	15%
07 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
11	96%
10	90%
09	86%
08	84%
07	81%
06	80%
05	78%
04	77%
03	73%
02	68%
01	61%
00	55%
99	49%
98	42%
97	35%
96	29%
95	22%
94	15%
93 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 2012 percent good applies to 2012 models purchased in 2011.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
12	90%
11	59%
10	57%
09	55%
08	53%
07	51%
06	50%
05	47%
04	45%
03	42%
02	40%
01	37%
00	35%
99	32%
98	30%
97	27%
96	25%
95	22%
94	20%
93	17%
92	15%
91 and prior	12%

(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
11	92%
10	83%
09	81%
08	75%
07	71%
06	67%
05	62%
04	58%
03	50%
02	40%
01	31%
00	20%
99 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 2012 percent good applies to 2012 models purchased in 2011.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
12	95%
11	83%
10	79%
09	74%
08	70%
07	65%
06	60%
05	56%
04	51%
03	46%
02	42%
01	37%
00	33%
99	28%
98	23%
97	19%
96 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
11	94%
10	88%
09	82%
08	77%
07	71%
06	65%
05	59%
04	54%
03	48%
02	42%
01	36%
00 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
11	84%
10	69%
09	51%
08	36%
07	19%
06 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
11	97%
10	95%
09	92%
08	90%
07	87%
06	84%
05	82%
04	79%
03	77%
02	74%
01	71%
00	69%
99	66%
98	64%
97	61%
96	58%
95	56%
94	53%
93	51%
92	48%
91	45%
90	43%
89	40%
88	38%
87	35%
86	32%
85	30%
84	27%
83	25%
82	22%
81	19%
80	17%
79	14%
78	12%
77 and prior	9%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2012.

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)(a)(iv) or (v).

(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-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-

2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) 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.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The 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. 2012 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 qualifying for agricultural use assessment pursuant to Section 59-2-503 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	852
2)	Cache	740
3)	Carbon	552
4)	Davis	893
5)	Emery	530
6)	Iron	848
7)	Kane	444
8)	Millard	840
9)	Salt Lake	742
10)	Utah	782
11)	Washington	695

12)	Weber	843

(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	748
2)	Cache	632
3)	Carbon	440
4)	Davis	784
5)	Duchesne	514
6)	Emery	427
7)	Grand	410
8)	Iron	744
9)	Juab	468
10)	Kane	341
11)	Millard	737
12)	Salt Lake	638
13)	Sanpete	569
14)	Sevier	593
15)	Summit	491
16)	Tooele	480
17)	Utah	677
18)	Wasatch	518
19)	Washington	592
20)	Weber	739

(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	602
2)	Box Elder	589
3)	Cache	479
4)	Carbon	291
5)	Davis	631
6)	Duchesne	361
7)	Emery	269
8)	Garfield	224
9)	Grand	258
10)	Iron	591
11)	Juab	315
12)	Kane	189
13)	Millard	583
14)	Morgan	411
15)	Piute	354
16)	Rich	188
17)	Salt Lake	485
18)	San Juan	189
19)	Sanpete	416
20)	Sevier	442
21)	Summit	334
22)	Tooele	322
23)	Uintah	391
24)	Utah	519
25)	Wasatch	359
26)	Washington	435
27)	Wayne	350
28)	Weber	588

(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	495
2)	Box Elder	486
3)	Cache	372
4)	Carbon	187
5)	Daggett	206
6)	Davis	527
7)	Duchesne	253
8)	Emery	166
9)	Garfield	121
10)	Grand	156
11)	Iron	483
12)	Juab	209
13)	Kane	86
14)	Millard	475
15)	Morgan	304
16)	Piute	247
17)	Rich	88
18)	Salt Lake	376
19)	San Juan	86
20)	Sanpete	313
21)	Sevier	339
22)	Summit	232
23)	Tooele	219
24)	Uintah	289
25)	Utah	417
26)	Wasatch	257
27)	Washington	327
28)	Wayne	247
29)	Weber	479

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	600
2)	Box Elder	650
3)	Cache	600
4)	Carbon	600
5)	Davis	655
6)	Duchesne	600
7)	Emery	600
8)	Garfield	600
9)	Grand	600
10)	Iron	600
11)	Juab	600
12)	Kane	600
13)	Millard	600
14)	Morgan	600
15)	Piute	600
16)	Salt Lake	600
17)	San Juan	600
18)	Sanpete	600
19)	Sevier	600
20)	Summit	600
21)	Tooele	600
22)	Uintah	600
23)	Utah	660
24)	Wasatch	600
25)	Washington	710
26)	Wayne	600
27)	Weber	655

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	247
2)	Box Elder	266
3)	Cache	275
4)	Carbon	132
5)	Daggett	161
6)	Davis	275
7)	Duchesne	168
8)	Emery	141
9)	Garfield	106
10)	Grand	136
11)	Iron	265
12)	Juab	154
13)	Kane	111
14)	Millard	198
15)	Morgan	200
16)	Piute	194
17)	Rich	108
18)	Salt Lake	231
19)	Sanpete	197
20)	Sevier	202
21)	Summit	206
22)	Tooele	190
23)	Uintah	210
24)	Utah	255
25)	Wasatch	212
26)	Washington	232
27)	Wayne	176
28)	Weber	308

(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	56
2)	Box Elder	102
3)	Cache	129
4)	Carbon	53
5)	Davis	55
6)	Duchesne	58
7)	Garfield	52
8)	Grand	53
9)	Iron	53
10)	Juab	54
11)	Kane	52
12)	Millard	51
13)	Morgan	69
14)	Rich	52
15)	Salt Lake	58
16)	San Juan	59
17)	Sanpete	58
18)	Summit	52
19)	Tooele	56
20)	Uintah	58
21)	Utah	54
22)	Wasatch	52
23)	Washington	52
24)	Weber	83

(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	17
2)	Box Elder	64
3)	Cache	90
4)	Carbon	16
5)	Davis	17
6)	Duchesne	21
7)	Garfield	16
8)	Grand	16
9)	Iron	16
10)	Juab	17
11)	Kane	16
12)	Millard	15
13)	Morgan	31
14)	Rich	16
15)	Salt Lake	17
16)	San Juan	19
17)	Sanpete	21
18)	Summit	16
19)	Tooele	16
20)	Uintah	21
21)	Utah	17
22)	Wasatch	16
23)	Washington	15
24)	Weber	48

(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	74
2)	Box Elder	78
3)	Cache	74
4)	Carbon	53
5)	Daggett	55
6)	Davis	63
7)	Duchesne	71
8)	Emery	74
9)	Garfield	79
10)	Grand	80
11)	Iron	76
12)	Juab	67
13)	Kane	77
14)	Millard	79
15)	Morgan	69
16)	Piute	93
17)	Rich	67
18)	Salt Lake	71
19)	San Juan	79
20)	Sanpete	65
21)	Sevier	66
22)	Summit	74
23)	Tooele	73
24)	Uintah	83
25)	Utah	68
26)	Wasatch	54
27)	Washington	67
28)	Wayne	91
29)	Weber	71

(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	23
2)	Box Elder	24
3)	Cache	24
4)	Carbon	16
5)	Daggett	15
6)	Davis	20
7)	Duchesne	23
8)	Emery	22
9)	Garfield	24
10)	Grand	23
11)	Iron	23
12)	Juab	20
13)	Kane	25
14)	Millard	25
15)	Morgan	22
16)	Piute	27
17)	Rich	21
18)	Salt Lake	22
19)	San Juan	26
20)	Sanpete	19
21)	Sevier	19
22)	Summit	21
23)	Tooele	21
24)	Uintah	29
25)	Utah	24
26)	Wasatch	18
27)	Washington	22
28)	Wayne	29
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	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	15
9)	Garfield	17
10)	Grand	16
11)	Iron	16
12)	Juab	14
13)	Kane	16
14)	Millard	17
15)	Morgan	14
16)	Piute	19
17)	Rich	14
18)	Salt Lake	15
19)	San Juan	17
20)	Sanpete	14
21)	Sevier	14
22)	Summit	15
23)	Tooele	14
24)	Uintah	20
25)	Utah	14
26)	Wasatch	13
27)	Washington	14
28)	Wayne	19
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 leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% 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.

(2) 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.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) 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.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) 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;

(ii) 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.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) 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.

(6) All taxing entities imposing a judgment levy shall file with the 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.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements

required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by

.015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary

Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by

the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is

calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft valuation manual" means a nationally recognized airline price guide containing value estimates for individual commercial aircraft in average condition and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102; and

(C) "airline market indicator" means an estimate of value based on an aircraft valuation manual.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft valuation manual, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft valuation manual, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that manual. If no fleet adjustment is provided in an aircraft valuation manual, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the manual.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft valuation manual under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) may also be included in an assessment or appraisal report for purposes of comparison.

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 Veterans With a Disability 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.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals

December 8, 2011	**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
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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
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
59-2-1308.5
59-2-1317
59-2-1328
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R907. Transportation, Administration.
R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.
R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.

(1) 23 U.S.C. 112 requires States to use the relevant parts of the Federal Acquisition Regulations (FAR), contained in 48 CFR Chapter 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

(2) Consequently, the Department adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in Federal-Aid transportation projects.

(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Department also adopts and incorporates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in most state-financed transportation projects.

R907-66-2. Financial Screening.

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

R907-66-3. Contract Negotiations.

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

R907-66-4. Award of Contracts.

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

R907-66-5 Small Purchase Cap.

To be consistent between federal-aid projects and state-financed projects, UDOT adopts the federal small purchase cap or simplified acquisition threshold established in 48 CFR 2.101, which is currently $150.000.

R907-66-6. Execution of Contracts.

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

KEY: transportation, contracts
December 8, 2011 63G-6-105
Notice of Continuation October 12, 2011 72-1-201

R914. Transportation, Operations, Aeronautics.
R914-1. Rules and Regulations.
R914-1-1. Purpose and Authority.

The purpose of this rule is to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish minimum standards for operational safety as authorized and required by Section 72-10-103.

R914-1-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Transporation;

(2) "FAA" means the Federal Aviation Administration; and

(3) Division means the Aeronautical Operations Division.

R914-1-3. Licensing, Inspection and Closure of Airports.

In accordance with Section 72-10-116, all public use airports will be licensed annually by the Aeronautical Operations Division.

(1) A license will be granted provided the airport is found to substantially meet all safety requirements.

(2) The Division may refuse or revoke a license and close an airport if safety criteria is not met.

(3) Safety criteria required includes:

(a) no pot holes or rutting in the surface of the runway, taxiway, or parking area;

(b) no break-up of paved surfaces or improperly maintained surface;

(c) no obstructions in the approach path or near the airport that cause an unsafe condition;

(d) no excessive growth of vegetation in the runway or taxiway surface;

(e) no inoperative or obscured runway or taxiway lighting system;

(f) no unsecured airport area that allows livestock, people, or vehicles uncontrolled access to the runways, taxiways, or airport area;

(g) no improper or inadequate runway marking; and

(h) no other items that can be determined to be a hazard to the operation of aircraft.

(4) A license may be issued at the discretion of the Division if an airport does not comply with all safety requirements but is satisfactorily working with the Division to correct any known deficiencies.

R914-1-4. Establishment and Location of Navigational Aids.

Procedure.

(1) Location site is selected.

(2) Site is surveyed for location and elevation.

(3) Selected site is submitted to the FAA for approval.

(4) Upon receiving FAA approval, navigational aid may be installed.

(5) After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-5. Operational Safety.

In order to enhance the safety of aircraft operations and protect people and property, the Department imposes the following operational safety rules.

(1) All pilots operating aircraft in the State of Utah will comply with applicable Federal Aviation Regulations.

(2) Obstruction to flight. Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

(3) Determination of obstruction. When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Department.

KEY: air traffic, aviation safety, airports, airspace
December 8, 2011 72-10-103
Notice of Continuation October 23, 2007 72-10-116

R920. Transportation, Operations, Traffic and Safety.
R920-6. Snow Tire and Chain Requirements.
R920-6-1. Purpose.

The purpose of this rule is to allow a Region Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in the State of Utah, that may not be safely traversed by the public or which would tend to create a hazard or hamper road maintenance activities, unless the vehicle traversing said highway is adequately equipped with certain safety devices.

R920-6-2. Authority.

The authority for this rule is in Sections 72-1-201 and 72-3-102; Title 72, Chapter 4, Part 1, Transportation Code, and Sections 41-6a-302 and 41-6a-1636.

R920-6-3. Provisions.

(1) Locations shall be designated by the Department of Transportation's Region Director after coordinating with the local Utah Highway Patrol office. The designations by the Region Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the Region Director's office wherein the designated highway is located.

(2) The Utah Department of Transportation's Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

(a) Utah Department of Transportation Region Offices;

(b) Utah Highway Patrol;

(c) county offices; and

(d) local law enforcement officials.

(3) When any designated highway is so restricted no vehicle shall be allowed or permitted the use of the highway, during the period between October 1 and April 30, or when conditions warrant due to adverse, or hazardous weather or roadway conditions, as determined by the Utah Department of Transportation, unless:

(a) said vehicle is equipped with either:

(i) steel link chains or have chains in possession;

(ii) mounted snow tires; (tires with an M/S designation with or without studs);

(iii) elastomeric tire chains, designed for use with radial tires; or

(iv) four-wheel drive vehicles with a minimum of two mounted snow tires.

(4) Radial tires without snow tread do not meet the requirements.

(5) An operator of a commercial vehicle with four or more drive wheels, other than a bus, shall affix tire chains to at least four of the drive wheel tires.

(6) An operator of a bus or recreational vehicle shall affix tire chains to at least two of the drive wheel tires.

R920-6-4. Responsibilities.

(1) Authorized personnel on location to enforce this rule, may permit vehicles not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

(2) The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule. The Utah Highway Patrol may request to enforce this rule by contacting the Region Director, or designated Department of Transportation representative where designated highway is located.

(3) The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

(4) All authority shall rest with the Executive Director or his designee to control use of highways where avalanche danger and other threats to the public safety are concerned.

(5) The Region Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

KEY: tires, snow

November 21, 2011	**41-6a-1636**
Notice of Continuation August 13, 2007	**72-1-201**
	72-3-102
	41-6a-302

R978. Veterans' Affairs, Administration.
R978-1. Rule Governing Veterans' Affairs.
R978-1-1. Authority.

(1) This rule is established pursuant to Section 71-8-2 which established the Department of Veterans' Affairs. This rule is made pursuant to Title 63G, Chapter 3 of the Utah Administrative Rulemaking Act.

R978-1-2. Purpose.

(1) The purpose of this rule is to define the functions and mission of the Department of Veterans' Affairs under Sections 71-8-1 through 71-11-10 and 38 CFR.

R978-1-3. Definitions.

(1) Terms used in this rule are defined in Sections 71-8-1, 71-10-1, and 71-11-2.

(2) Additional terms are defined as follows:

(a) "Homeless veteran" means a qualified veteran who is currently experiencing an episode of homelessness without a stable, regular indoor place of residence.

(b) "Nursing Home" means a State licensed facility accommodating persons who require skilled nursing care and related medical services.

(c) "Stand down" is a term derived from the Vietnam war meaning a place of safe refuge from operations where soldiers can get clean clothes, warm food, basic medical and dental care, hygiene services and camaraderie. It is here applied to the provision of these services for homeless veterans.

(d) "State Officer" means the State official authorized to oversee the operations of the State veterans nursing home.

(e) "Widow" means the unmarried spouse of a deceased veteran of either sex.

R978-1-4. Nursing Homes.

(1) The department shall administer the various state veterans' nursing homes in accordance with Title 71, Chapter 11, Utah Veterans' Nursing Home Act.

(2) Each nursing home shall have a State Officer who shall act as the department's liaison to carry out the requirements of this act.

(3) Each home shall enforce admission requirements in accordance with Section 71-11-6 as established by the department.

(4) Each home shall comply with 38 CFR 51, "Per Diem for Nursing Home Care of Veterans" for per diem payments, per diem payments for veterans with service connected disabilities, payments for drugs and medicines for certain veterans, and nursing home standards.

(5) The department may contract with reputable nursing home management firms for the day-to-day operation of the nursing homes as provided in 38 CFR 51.210. Selection shall be by a competitive bid process with criteria established by the department. The department shall establish the duration for the management contracts and other contractual terms and conditions in the best interests of the residents.

(6) Notwithstanding the authority of the management firm to employ and direct all nursing home employees, the State Officer shall be an employee of the department and shall be independent of the management firm. The State Officer shall oversee the operations of the state nursing home.

R978-1-5. Cemetery and Memorial Park.

(1) The department shall administer the state veterans' cemetery and memorial park in accordance with Section 71-7-3.

(2) Fees charged for burial expenses shall be posted at the cemetery office and on the department website. Fees charges for other funeral expenses, including headstone replacement, shall be posted at the cemetery office and on the department website.

R978-1-6 Homeless Veterans.

(1) The department shall coordinate with local, state and federal programs providing short and long term housing for homeless veterans in the state as provided in Subsection 71-8-3 (1)(d).

(2) The department shall direct a stand down for homeless veterans to assist in their temporal, physical and mental needs at least annually.

R978-1-7. Education Programs.

(1) The department shall administer the State Approving Agency (SAA) for Veterans Education as directed in Subsection 71-8-3(1)(e).

(2) The SAA shall perform all duties necessary for the inspection, approval and supervision of educational programs offered by qualified educational institutions, training establishments, and tests for licensing and certification in accordance with the standards and provisions of 38 U.S.C. 30, 32, 33, 35, and 36, and 10 U.S.C. 1606 and 1607.

(3) The SSA shall provide in-depth technical assistance and outreach liaison with all related organizations, agencies, individuals and activities to help veterans and other eligible persons achieve their educational and vocational goals.

(4) The SSA shall reach out to eligible persons and inform them of their benefits through the GI Bill, which will assist veterans in making the most informed decision toward their vocational and educational goals.

(5) The SSA shall perform other duties and functions as determined by the U.S. Department of Veteran Affairs via annual contract for SSA services.

R978-1-8. State Benefits.

(1) The department shall assist veterans, their widows and dependents in procurement of all rights and benefits which may accrue to them by reason of military service to the United States in accordance with Section 71-9-1. Specifically, the department shall disseminate information on benefits to veterans and interested parties via:

(a) community outreach

(b) fairs, exhibits and community events

(c) the Utah Veterans Voice newspaper and other appropriate media

(d) the department's public website (http://veterans.utah.gov)

(e) cooperative activities with other veterans organizations

(2) Specific state benefits that the department shall assist veterans and their dependents in securing include:

(a) Disabled Veteran Property Tax Abatement

(b) Purple Heart Tuition Waiver

(c) Purple Heart Fee Exemption

(d) Scott B Lundell Tuition Waiver for military members' surviving dependents

(e) Honorary high school diplomas

(f) Veteran's license plates

(g) Free use of armories

(h) Fishing license privileges

(i) Special fun tags

(j) America the Beautiful pass

(k) Trax/bus reduced fare cards

(l) Veterans Upward Bound

(m) Such other state benefits to veterans as may be established by statute

R978-1-9. Federal Benefits.

(1) The department cannot administer any federal veterans benefit programs, but it shall provide information and assistance to veterans, their widows and dependents in understanding and navigating the rules of federal veterans' benefits. These federal benefits include:

(a) veterans compensation and pensions
(b) Dependency and indemnity compensation (DIC) payments
(c) Disability compensation
(d) Home loan guarantee program
(e) Post 9-11 G.I. Bill
(2) The department may contract with other military service organizations to assist veterans, their spouses, widows and dependents in securing their rights, benefits, and employment preferences as provided in Section 71-9-1.

R978-1-10. Tracking Veteran Employees.
(1) The department shall coordinate with the Utah State Department of Human Resource Management (DHRM) to maintain current counts of the number of veterans employed by the State of Utah in each department, as provided in Subsection 71-8-3 (5). The department shall encourage state agencies and departments to properly record veteran status for all employees.
(2) A count of veterans in state government shall be updated and kept on file at least twice per year.

R978-1-11. Record of Veterans.
(1) The department shall create and maintain a record of veterans in Utah as provided in Subsection 71-8-3 (6).
(2) The department shall maintain a searchable self-registration for Utah veterans on the department website.
(3) The department shall work with the Utah Department of Information Technology, the Department of Workforce Services, and the Utah Drivers License Division to develop a searchable, digital database of Utah veterans.
(4) The department shall secure paper and digital copies of veterans' form DD-214 to assist in creating a database of verified veterans from Utah and to assist Utah veterans in securing all available benefits.
(5) The department shall contract, as appropriate, for technical assistance in creating and maintaining veterans' databases.

KEY: veterans' affairs
December 10, 2011 71-8-2

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, sign a FEP Agreement, and negotiate and sign an employment plan 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.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed.

If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

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, parents listed on the birth certificate 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.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(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 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) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial

assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) 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.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. 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.

(7) 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.

(8) 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.

(9) If a client is also receiving food stamps and the client 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. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal 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, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(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.

(10) A household can only receive one diversion assistance payment in a 12 month period.

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) Employment extension. An exception to the time limit can be granted for a maximum of an additional 24 months if 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.

(a) If, at the end of the 24-month extension, the parent client qualifies for an extension under subsections (1) or (2) of this section, an additional extension can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an extension can be granted under subsections (1) and (2) of this section.

(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. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(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. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(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:

TABLE

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 earned and 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 termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(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) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) 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.

(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 1 week of UI benefits remaining on his or her claim. The week can be 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 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;

(f) have not previously participated in the BWP or BWY program; and

(g) sign a "statement of facts" agreement.

(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. BWY youth do not need to be a parent but must meet the requirements of subsections (1)(e) through (g) of this section. Eligible Utah Back to Work Youth who are also eligible UI claimants are not required to have a minor dependent child.

(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" 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, employees who receive gratuities plus wages may qualify if the employer reports $9 per hour or more to the UI Contributions division;

(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;

(g) does not hire the claimant for temporary or seasonal work and

(h) has signed a participation agreement with the department. The agreement must be signed before the "date of hire" of the qualified unemployed individual. A qualified unemployed individual is one who has enrolled in, and is eligible for, the BWP. The date of hire means the date services for remuneration were first performed by the employee.

(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.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) 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" which is defined as 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 $8 per hour. Commission only jobs may qualify if the employer guarantees $8 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 client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient 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.

(4) FEP SE 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.

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