

R21. Administrative Services, Debt Collection.**R21-1. Transfer of Collection Responsibility of State Agencies.****R21-1-1. Purpose.**

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4, Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-8-201(3)(m), 63A-8-201(6)(f), 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4, Utah Code and the Office intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-8-201(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-8-201(6)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-8-201(6)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-8-201(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-8-201(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-8-201(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

- (1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.
- (2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.
- (3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.
- (4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.
- (5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.
- (6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

Pursuant to Subsection 63A-8-201(3)(b), (d), and (f) as provided by Subsection 63G-3-201, state agencies shall document and track agency receivables on the state's Advanced Receivable Subsystem unless the state agency has received an

exemption from the Advisory Board to the Office of State Debt Collection. If a state agency receives such an exemption, the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-8-201(6)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines are included in the document entitled "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable". This document is available at the Office of State Debt Collection, Room 5110 State Office Building, Salt Lake City, Utah, during regular working hours, for review.

R21-1-5. Transfer of Collection Responsibility.

Each state agency with delinquent accounts shall comply with the provisions of Section 63A-8-201, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the event or is delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date. Office recommendations related to the transfer of collection responsibility can be found in the Office publication "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable".

R21-1-6. Format for Transfer of Accounts Receivable Data.

State agencies shall transfer delinquent accounts to the Office or its designee electronically through the state's Advanced Receivable Subsystem. State agencies exempted from using the state's Advanced Receivable Subsystem shall work with the Office to generate an electronic placement file for placing accounts.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-8-201(4)(g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-8-201(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection. A percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated based on the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collection are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the OFFICE. Postjudgment interest as established by

Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-8-201 (4) (g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment after the payment of the costs of collection and the penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust receivable balance, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd penalty payment, 3rd - accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be reversed from the trust account and applied to amounts owed the state on the account. After the state debt is liquidated, payments shall be applied to the trust and if the victim still cannot be located, the payments shall be retained by the division of Finance for the appropriate time and then sent to Unclaimed Property and thereafter to Crime Victims Reparation.

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance.

KEY: accounts receivable collection transfer

August 13, 2002

Notice of Continuation June 28, 2012

63A-8-201(3)(m)

63A-8-201(4)(g)

63A-8-201(6)(a)

63A-8-201(6)(b)

63A-8-201(6)(f)

15-1-4

R21. Administrative Services, Debt Collection.**R21-2. Office of State Debt Collection Administrative Procedures.****R21-2-1. Purpose.**

The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

R21-2-2. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Sections 63G-4-202 and 63G-4-203 of the Utah Administrative Procedures Act.

R21-2-3. Definitions.

In addition to terms defined in Sections 63A-8-101 and 63G-4-103, the following terms are defined below as follows:

(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2)(a) "Participate" means present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(b) if a hearing is scheduled, "participate" means attend the hearing.

(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

R21-2-4. Designation of Presiding Officers.

All matters over which the office has jurisdiction and which are subject to Section 63G-4-202 will be presided over by the office director or designee.

R21-2-5. Form of Proceeding.

All adjudicative proceedings commenced by the office or commenced by other persons affected by the office's actions shall be informal adjudicative proceedings.

R21-2-6. Adjudicative Proceedings.

(1) The following actions are considered to be adjudicative proceedings:

(a) All hearings which lead to the establishment of an Order to collect delinquent accounts receivable owed to an agency of the State;

(b) All hearings which lead to the amending of an Administrative Order; and

(c) All hearings which lead to the setting aside of an Administrative Order.

R21-2-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Title 63G, Chapter 4 may be served using methods provided in Title 63G, Chapter 4 or outlined by the Utah Rules of Civil Procedures.

R21-2-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings will be as follows:

(1) The presiding officer will issue an order of default unless the entity does one of the following in response to service of a notice of office action:

(a) pays the entire delinquent account receivable in full; or

(b) participates as provided in Section R21-2-11;

(2) The presiding officer shall schedule a hearing if available under Section R21-2-9 and the entity requests it in writing within the following time periods:

(a) within 30 days of service of a notice of agency action

requesting payment in full of a delinquent accounts receivable;

(b) within 20 days of service of a notice of agency action in all other adjudicative proceedings; or

(c) before an order is issued by the presiding officer.

(3) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

(a) the decision;

(b) the reason for the decision;

(c) a notice of the right to administrative and judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting reconsideration.

(4) The presiding officer's order shall be based on the facts appearing in the office files (the record) and on the facts presented in evidence at any hearings.

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

R21-2-9. Availability of Hearing in Informal Adjudicative Proceedings.

(1) A hearing is permitted in an informal adjudicative proceeding if:

(a) the entity in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in Section R21-2-10; and

(b) participates in an office conference.

R21-2-10. Hearings in Informal Adjudicative Proceedings.

(1) All hearing requests shall be referred to the presiding officer appointed to conduct hearings.

(2) The presiding officer shall give timely notice of the date and time of the hearing to all parties.

(3) Before granting a hearing regarding a delinquent account receivable, the presiding officer appointed to conduct the hearing may decide whether or not the respondent raises a genuine issue as to a material fact. If the presiding officer determines that there is no genuine issue as to a material fact, he may deny the request for hearing, and close the adjudicative proceeding.

(4) If the respondent objects to the denial of the hearing, he may raise that objection as grounds for relief in a request for reconsideration.

(5) There is no genuine issue as to a material fact if:

(a) the evidence gathered by the office and the evidence presented for acceptance by the entity are sufficient to establish the delinquent obligation of the entity under applicable law; and

(b) no other evidence in the record or presented for acceptance by the entity in the course of entity's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

(6) Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

(a) documented information from agency sources;

(b) failure of the entity to produce upon request of the presiding officer canceled checks, or alternative documentation, as evidence of payments made; or

(c) failure of the entity to produce a record kept by a financial institution, the agency initially servicing the debt, the office or its designee, showing payments made.

R21-2-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the presiding officer unless the entity specifically requests that the hearing be conducted face to face.

R21-2-12. Procedures and Standards for Orders Resulting from Service of a Notice of Office Action.

(1) If the entity agrees with the notice of action, it may

stipulate to the facts and to the amount of the debt and obligation to be paid. A stipulation and order based on that stipulation is prepared by the office for the entity's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

(2) If the entity participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue an order based on that participation.

(3) If the entity requests a hearing and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

(4) If the entity fails to participate as follows, the presiding officer shall issue an order of default, based on whether or not:

(a) the entity fails to participate by presenting relevant information and does not request a hearing in response to the notice of office action;

(b) after proper notice the entity fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

(c) after proper notice the entity fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

(5) The default order is taken for the amount specified in the notice of action which was served on the entity plus accrued interest, penalties and applicable collection costs from the date of the action until paid in full by the entity at the interest rate specified in the default order. The entity may seek to have the default order set aside, in accordance with Section 63G-4-209.

(6) If an entity's request for a hearing is denied under Section R21-2-10, the presiding officer issues an order based upon the information in the office file.

(7) Notwithstanding any prior agreements which sets terms for the payment of the delinquent account receivable, the office reserves the right to intercept state tax refunds or other State payments to the entity to satisfy the debt represented by the delinquent account receivable.

R21-2-13. Conduct of Hearing in Informal Adjudicative Proceedings.

(1) The hearing shall be conducted by a duly qualified presiding officer. No presiding officer shall hear a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

(2) Duties of the presiding officer:

(a) Based upon the notice of office action, objections thereto, if any, and the evidence presented at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the parties.

(b) The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of office action to conform to the evidence.

(3) Rules of Evidence:

(a) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(b) Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

(c) Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

(d) All relevant evidence shall be admitted.

(e) Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

(f) All parties shall have access to information contained in the office's files and to all materials and information gathered in the hearing, to the extent permitted by law.

(g) Intervention is prohibited.

(4) Rights of the parties: A party appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the party's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before the presiding officer by a representative of the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General.

R21-2-14. Order Review.

Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in the Sections 63G-4-302 and 63G-4-401.

R21-2-15. Reconsideration.

Either the entity or the office may request reconsideration in accordance with Section 63G-4-302 once during an informal adjudicative proceeding.

R21-2-16. Setting Aside Administrative Orders.

(1) The office may set aside an administrative order for any of the following reasons:

(a) a rule or policy was not followed when the order was taken;

(b) the entity was not properly served with a notice of office action;

(c) the entity was not given due process; or

(d) the order has been replaced by a judicial order which covers the same time period.

(2) the office shall notify the entity of its intent to set the order aside by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of office action, the presiding officer determines that the order shall be set aside, the office shall notify the entity.

R21-2-17. Amending Administrative Orders.

(1) The office may amend an order for either of the following reasons:

(a) a clerical mistake was made in the preparation of the order; or

(b) the time periods covered in the order overlap the time periods in another order for the same participants.

(2) The office shall notify the entity of its intent to amend the order by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level

which issued the order.

(3) If after serving the entity with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the entity.

KEY: accounts receivable adjudicative process

August 13, 2002

63G-4-202

Notice of Continuation June 28, 2012

63G-4-203

R21. Administrative Services, Debt Collection.**R21-3. Debt Collection Through Administrative Offset.****R21-3-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-8-204(2)(f), which authorizes the Office of State Debt Collection to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

- (a) name of entity;
- (b) social security number or federal employer's identification number of the entity;
- (c) amount of delinquent account receivable; and

(2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the state's Accounting System.

R21-3-7. Notification and Response.

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-8. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

- (a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the

administrative offset; plus

(b) the amount identified in Subsection R21-3-7(3) to satisfy the delinquent account receivable.

R21-3-9. Release of Offset Funds by the Division.

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

R21-3-10. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-11. Administrative Fee.

Pursuant to Section 63A-8-201(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable administrative offset

August 13, 2002

63A-8-204(2)(f)

Notice of Continuation June 28, 2012

R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules establishing per diem rates.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$38.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$9.00
Lunch	\$13.00
Dinner	\$16.00
Total	\$38.00

(b) The daily travel meal allowance for out-of-state travel is \$47.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$23.00
Total	\$47.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$62 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the \$62 premium allowance as follows:

(i) If breakfast is provided deduct \$14, leaving a premium allowance for lunch and dinner of actual up to \$48.

(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$43.

(iii) If dinner is provided deduct \$29, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59

*B, L, D	*L, D	*D	*no meals
In-State			
\$38.00	\$29.00	\$16.00	\$0
Out-of-State			
\$47.00	\$37.00	\$23.00	\$0

*B=Breakfast, L=Lunch, D=Dinner

- (b) The days at the location.
- (i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.
- (ii) Meals provided on airlines will not reduce the meal allowance.
- (c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4
The Day Travel Ends

1st Quarter a.m.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:00-5:59	6:00-11:59	12:00-6:59	7:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
\$0	\$9.00	\$22.00	\$38.00
Out-of-State			
\$0	\$10.00	\$24.00	\$47.00

*B=Breakfast, L=Lunch, D=Dinner

- (7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.
 - (a) Breakfast is paid when the employee leaves their home base before 6:01 a.m.
 - (b) Lunch is paid when the trip meets one of the following requirements:
 - (i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.
 - (ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.
 - (iii) The Department Director provides prior written approval based on circumstances.
 - (c) Dinner is paid when the employee leaves their home base and returns after 7 p.m.
 - (d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

- (1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.
- (2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

- State employees who travel on state business may be eligible for a lodging reimbursement.
 - (1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI

51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5
Cities with Differing Rates

American Fork	\$75.00 plus tax
Beaver	\$70.00 plus tax
Blanding	\$75.00 plus tax
Bryce	\$70.00 plus tax
Cedar City	\$70.00 plus tax
Delta	\$70.00 plus tax
Ephraim	\$70.00 plus tax
Fillmore	\$70.00 plus tax
Green River	\$75.00 plus tax
Heber City / Midway	\$90.00 plus tax
Kanab	\$75.00 plus tax
Layton	\$75.00 plus tax
Logan	\$75.00 plus tax
Moab	\$95.00 plus tax
Monticello	\$70.00 plus tax
Nephi	\$70.00 plus tax
Ogden	\$75.00 plus tax
Park City	\$90.00 plus tax
Price	\$75.00 plus tax
Provo / Orem / Lehi	\$75.00 plus tax
Roosevelt	\$85.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$95.00 plus tax
Springville	\$70.00 plus tax
St George / Washington / Springdale	\$75.00 plus tax
Torrey	\$70.00 plus tax
Tremonton	\$90.00 plus tax
Vernal	\$90.00 plus tax
All Other Utah Cities	\$65.00 plus tax

- (3) State employees traveling less than 50 miles in excess of their normal office commute are not entitled to lodging reimbursement.
- (4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.
- (5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.
- (6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.
- (7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.
- (8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.
 - (a) For out-of-state travel, the approval may be on the form FI 5.
 - (b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.
- (9) A proper receipt for lodging accommodations must accompany each request for reimbursement.
 - (a) The tissue copy of the charge receipt is not acceptable.
 - (b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).
- (10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to

minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

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

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$20.00 and for all airport parking.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to \$2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 55.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 55.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is

more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 55.5 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state employees, transportation
July 1, 2012
Notice of Continuation April 29, 2008**

**63A-3-107
63A-3-106**

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

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

R27-7-2. Accident Reporting and Liability.

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

R27-7-3. Driver Eligibility to Operate a State Vehicle.

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

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

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

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

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Eligibility Board for any of the following reasons:

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

(b) The authorized driver has 4 or more moving violations within a 12 month period; or

(c) The authorized driver has been convicted of any of the following:

- (i) Alcohol related driving violations;
- (ii) reckless, careless, or negligent driving (including excessive speed violations);
- (iii) driving violations that have resulted in injury or death;
- (iv) felony related driving violations;
- (v) hit and run violations;
- (vi) impaired driving;
- (vii) or any other driving violation determined by the Driver Eligibility Board as posing a significant risk to the safety or loss prevention of state vehicles.

(d) The unauthorized use, misuse, abuse or neglect of a state vehicle as validated by the driver's agency; or

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

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Eligibility Board shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(5) Drivers declared ineligible to operate a state vehicle by the Driver Eligibility Board may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any appeal to the Executive Director of DAS or his/her designee must be made in writing within 30 days from the date the Driver Eligibility Board declared a state driver ineligible to operate a vehicle.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule will be subject to the Driver Eligibility standards in R27-7-3(3) for three years previous to the hire date.

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

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

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

(3) After DFO has made an initial determination regarding the status of an accident the agency ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards published by the National Safety Council.

(4) Each agency ARC shall, within one (1) calendar month following the last day of the quarter (March, June, September, December), provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable or non-preventable.

(5) If an agency ARC does not send the quarterly accident reviews as specified in R27-7-4(4), the status of the accident will be reviewed by the Driver Eligibility Board on behalf of the agency ARC. The Driver Eligibility Board's decision about the status any vehicle accident will be final. The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency ARC.

R27-7-5. Accident Review Committee Guidelines.

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

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

- (a) Driving too fast for conditions;
- (b) Failure to observe clearance;
- (c) Failure to yield;
- (d) Failure to properly lock the vehicle;
- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;
- (j) Reckless Driving as defined in Utah Code 41-6a-528;
- (k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

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

- (a) The state vehicle is struck while properly parked;
- (b) The state vehicle is vandalized while parked at an authorized location;
- (c) The state vehicle is an emergency vehicle, and
 - (i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and
 - (ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or
 - (iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

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

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

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

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

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board (DEB) shall have at least 4 voting members. Members of the Board shall include a representative from the Division of Risk Management, the Division of Fleet Operations, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet at least quarterly.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board may impose an ineligible status from a single day up to three years. In no case shall the ineligible status to operate a state vehicle be less than the period imposed by the courts or the employing agency.

KEY: accidents, incidents, tickets, ARC

June 28, 2012

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

Notice of Continuation November 29, 2010

R81. Alcoholic Beverage Control, Administration.**R81-4F. Reception Center License.****R81-4F-1. Licensing.**

(1) Effective November 1, 2011, before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission pursuant to 32B-6-803.

(2) A reception center license is issued to a person as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Section 32B-5-310.

R81-4F-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a reception center license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-804 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the reception center premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-4F-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-804(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4F-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4F-5. Reception Center Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a reception center licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The

licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4F-6. Reception Center Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-805(8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4F-7. Sale and Purchase of Alcoholic Beverages.

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, service charges, and all other sales. These records shall be reported to the department on an annual basis as part of the application for renewal of the reception center license. Additionally, these records should be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(4) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

R81-4F-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the reception center as approved by the department.

R81-4F-9. Alcoholic Product Flavoring.

Reception center liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the reception center license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No reception center employee under the age of 21 years may handle alcoholic product flavorings.

R81-4F-10. Table Service.

(1) Alcoholic products may not be sold, offered for sale, or furnished to a patron, and a patron may not consume an alcoholic product at a bar structure. Alcoholic products may be dispensed from a mobile serving area that is moved only by staff of the reception center licensee, is capable of being moved by only one individual, and is no larger than 6 feet long and 30 inches wide. Otherwise, alcoholic products must be dispensed from an area that is separated from an area for the consumption of food by a patron by a solid, translucent or opaque, permanent structural barrier in accordance with 32B-6-805(15).

(2) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(3) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(4) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department.

R81-4F-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4F-12. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-805(3).

(2) Purpose. This rule implements the requirement of 32B-6-805(3) that requires the commission to provide by rule procedures for reception center licensees to report scheduled events to the department to allow random inspections of events by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under 32B-6-801 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been

scheduled as of the reporting date for that quarter.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each scheduled event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of a reception center licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

R81-4F-13. Agreement For Alcoholic Beverage Service.

(1) "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

KEY: alcoholic beverages, reception center licenses

July 1, 2012

32B-2-202
32B-6-805(3)

R81. Alcoholic Beverage Control, Administration.**R81-7. Single Event Permits.****R81-7-1. Application Guidelines.**

(1) A single event permit is issued to those who are conducting a convention, civic or community enterprise.

(a) "Conducting" means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(b) "Convention, civic or community enterprise" means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good.

(2) An application for a single event permit application shall be considered for issuance of a single event permit when the requirements of Section 32B-1-304 and 32B-9-201, -203 and -304 have been met, and a completed application has been received by the department.

(a) Once received, the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(3) Pursuant to Section 32B-9-303, Subject to the requirements of 32B-9-202(2)(f)(g)and(h) and 32B-9-202(3)(a)(b)(c)and(d), the director may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(4) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(6) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(7) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(8) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with this Subsection (7), the director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) the type of entertainment, if any, at the event;
- (d) the location of the event;
- (e) the frequency of events held at the same location;
- (f) whether the location is government owned and operated; and
- (g) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.
- (9) Calendar year is defined as January 1 through December 31.

(10) The single event permit bond, as required by Section 32B-9-304(3), shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(11) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32B-9-304(3), an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(12) The director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a single event permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the director will issue a single event permit for an outdoor or a large-scale public event. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -303.

(4) Policy.

(a) Before a single event permit will be issued by the director to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of

birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the director prior to the director's consideration of the single event permit application.

(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place,

to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

**KEY: alcoholic beverages, single event permits
July 1, 2012**

32A-1-107

Notice of Continuation May 10, 2011

R81. Alcoholic Beverage Control, Administration.**R81-10B. Temporary Beer Event Permits.****R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be considered for issuance of the permit, when the requirements of 32B-1-304 and 32B-9-201, -203 and -405 have been met, and a completed application has been received by the department.

(a) Once received -- the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3) Pursuant to 32B-9-403, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32B-9-403. To ensure compliance with this Subsection (3), the director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) whether the event is a convention, community or civic enterprise;
- (d) the type of entertainment, if any, at the event;
- (e) the location of the event;
- (f) the frequency of events held at the same location;
- (g) whether the location is government owned and operated; and
- (h) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(4)(a) The temporary special event beer permit bond, as required by Section 32B-9-405(3), shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the director rules, and that if a violation occurs at the event, the bond may be forfeited.

(5) The director may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The director may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits for Outdoor or Large -Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a temporary special event beer permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before

the director will issue a temporary special event beer permit for an outdoor or a large-scale public event. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -403.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the director to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a temporary special event beer permit. These can

include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the director prior to the director's consideration of the permit application.

(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages, temporary beer event permits
July 1, 2012 32A-1-107
Notice of Continuation July 31, 2008 32A-10

R131. Capitol Preservation Board (State), Administration.**R131-3. Use of Magnetometers on Capitol Hill.****R131-3-1. Authority.**

Subsection 63C-9-301(3)(a) requires the Capitol Preservation Board to make rules to govern, administer, and regulate Capitol Hill facilities and Capitol Hill grounds.

R131-3-2. Definitions.

(1) Terms used in this rule are defined in Section 63C-9-102.

(2) In addition:

(a) "Magnetometer" means a device that electronically detects the presence of ferrous metals from their effect on the magnetic field surrounding the earth.

(b) "Capitol Hill identification card" means a valid identification card issued or recognized by the board with a picture, individual name, and department identifying the person as a state elected official or state employee. A Capitol Hill identification card for this purpose does not include a card issued to an individual who are not a state elected official or state employee.

R131-3-3. Security Levels.

(1) Notwithstanding any provision in this rule, under all security levels, Capitol Hill security personnel may in all cases exercise the full authority and discretion granted to them by law to maintain the public safety and peace and to enforce the law.

(2) "Security level one"

(a) Any person entering a facility may be asked to register with the Capitol Hill security personnel. No one is required to pass through a magnetometer.

(b) State elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter at all entrances without registering or passing through a magnetometer.

(c) Bag searches may not be conducted.

(3) "Security level two"

(a) Except as provided in Subsection (3)(b), all persons entering a facility may be required to register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel may require State elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel may require bag searches for persons entering a facility including state elected officials and state employees holding a valid Capitol Hill identification card.

(4) "Security level three"

(a) Except as provided in Subsection (4)(b), all persons entering a facility shall register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel shall require state elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel shall require bag searches for all person entering a facility, including state elected officials and state employees.

R131-3-4. Magnetometers.

(1) By this rule, the board authorizes the use of magnetometers by Capitol Hill security personnel. Magnetometers may be used for security levels two and three.

(2) Capitol Hill security personnel may use magnetometers

in facilities and on the grounds under the jurisdiction of the board after the commander of Capitol Hill security, or that person's superior, determines that there is a justification for increasing security precautions to level two, or level three. Depending on where the threat is focused, different Capitol Hill facilities may be designated to be at different security levels. When practicable, the decision to increase security precautions at any Capitol Hill facility shall be made in consultation with the executive director. Otherwise, the person making the determination to change from one security level to another, shall notify the executive director as soon as practicable after the decision is made.

(3) The executive director shall notify the members of the board when the security level is changed. Any member of the board may request a meeting of the full board to examine further the decision to move to higher security levels. The Board may lower the security level by a majority vote of the members present forming a quorum of the Board. The Commander may also reduce the security level depending on the security information received.

(4) The board and Capitol Hill security personnel, while using magnetometers in facilities under the authority of the board, shall not impact or infringe upon the rights of persons to keep and bear arms in accordance with Utah Constitution Article I, Section 6, and Title 76, Chapter 10, Part 5. A person carrying a concealed weapon by permit may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

**KEY: public buildings, state buildings, facilities use
May 30, 2002
Notice of Continuation June 13, 2012**

63C-9-301(3)

R151. Commerce, Administration.**R151-4. Department of Commerce Administrative Procedures Act Rule.****R151-4-101. Title and Organization.**

This rule (R151-4) is:

- (1) known as the "Department of Commerce Administrative Procedures Act Rule;" and
- (2) organized into the following Parts:
 - (a) Part 1, General Provisions (R151-4-101 through R151-4-114);
 - (b) Part 2, Pleadings (R151-4-201 through R151-4-205);
 - (c) Part 3, Motions (R151-4-301 through R151-4-305);
 - (d) Part 4, Filing and Service (R151-4-401 through R151-4-402);
 - (e) Part 5, Discovery - Formal Proceedings (R151-4-501 through R151-4-516);
 - (f) Part 6, Depositions - Formal Proceedings (R151-4-601 through R151-4-611);
 - (g) Part 7, Hearings (R151-4-701 through R151-4-712);
 - (h) Part 8, Orders (R151-4-801 through R151-4-803); and
 - (i) Part 9, Agency Review and Judicial Review (R151-4-901 through R151-4-907).

R151-4-102. Definitions.

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule (R151-4):

- (1) "Agency head" means the executive director of the department or the director of a division.
- (2) "Applicant" means a person who submits an application.
- (3) "Application" means a request for:
 - (a) licensure;
 - (b) certification;
 - (c) registration;
 - (d) permit; or
 - (e) other right or authority granted by the department.
- (4) "Department" means:
 - (a) the Utah Department of Commerce; or
 - (b) a division of the department.
- (5) "Division" means a division of the department.
- (6) "Electronic" means a:
 - (a) facsimile transmission; or
 - (b) PDF file attached to an email.
- (7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
- (8) "Motion" means a request for any action or relief in an adjudicative proceeding.
- (9) "Party in interest:"
 - (a) includes:
 - (i) a party;
 - (ii) a relative of a party; or
 - (iii) an individual with a financial interest in the outcome of the proceeding; and
 - (b) does not include:
 - (i) a party's counsel; or
 - (ii) an employee of a party's counsel.
- (10) "Petition" means the charging document setting forth:
 - (a) statement of jurisdiction;
 - (b) statement of one or more allegations;
 - (c) statement of legal authority; and
 - (d) request for relief.
- (11) "Pleadings" include the following along with any response:
 - (a) notice of agency action or request for agency action;
 - (b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;
 - (c) a request for agency review or agency reconsideration;
 - (d) motions, briefs or other documents filed by the parties on agency review; and

- (e) a response submitted to a pleading.

R151-4-103. Authority.

This rule (R151-4) is adopted under Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures that govern adjudicative proceedings before the department.

R151-4-104. Supplementing Provisions.

Any provision of this rule (R151-4) may be supplemented by a division rule unless expressly prohibited by this rule.

R151-4-105. Purpose and Scope.

(1) This rule (R151-4) is intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) In the event of a conflict between this rule and a statute, the statute governs.

R151-4-106. Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule (R151-4), but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

R151-4-107. Computation of Time.

- (1) Periods of time in department proceedings shall:
 - (a) exclude the first day of the act, event, or default from which the time begins to run; and
 - (b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.
 - (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
 - (ii) Except as provided in R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.
 - (b) No additional time is provided if service is accomplished by electronic means.

R151-4-108. Timeliness of Administrative Proceedings.

In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day on which:

- (1) the notice of agency action is issued; or
- (2) the initial decision with respect to a request for agency action is issued.

R151-4-109. Extension of Time and Continuance of Hearing.

(1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:

- (a) whether there is good cause for granting the extension or continuance;
- (b) the number of extensions or continuances the requesting party has already received;
- (c) whether the extension or continuance will work a significant hardship upon the other party;
- (d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and
- (e) whether the other party objects to the extension or continuance.

(2)(a) Except as provided in R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar

days after the day on which:

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.

(b) Notwithstanding R151-4-109(2)(a), an extension of a time period or a continuance may exceed the time restriction in R151-4-109(2)(a) only if:

(i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel; or

(C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; and

(ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(c) The failure to conclude a hearing within the required time period is not a basis for dismissal.

(3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

R151-4-110. Representation of Parties.

(1) A party may:

(a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

R151-4-111. Review of Emergency Orders.

Unless otherwise provided by statute or rule:

(1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:

(i) the division has previously:

(A) commenced an emergency adjudicative proceeding in the matter; and

(B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and

(ii) the affected party timely submits a written request for a hearing.

(b) A hearing under this rule (R151-4-111) shall be conducted in conformity with Section 63G-4-206.

(2)(a) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day on which the hearing to consider the emergency order concludes, the

presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

R151-4-112. Declaratory Orders.

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

(B) the facts and circumstances related to the question;

(C) the statute, rule, or order to be applied to the question;

and

(D) whether oral argument is sought in conjunction with the petition; and

(ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

(v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

(a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions that are not within the jurisdiction of the department;

(c) questions that have been addressed by the department in an order, rule, or policy;

(d) questions that can be addressed by informal advice;

(e) questions that are addressed by statute;

(f) questions that would be more properly addressed by statute or rule;

(g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or

(h) questions that are irrelevant, insignificant, meaningless, or spurious.

(4) The recipient of a declaratory order may request agency review.

R151-4-113. Record of an Adjudicative Proceeding.

The record of an adjudicative proceeding includes:

(1) the pleadings and exhibits filed by the parties;

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:

(a) by a presiding officer; or

(b) on agency review or reconsideration.

R151-4-114. Informal Adjudicative Proceedings in General.

(1) Any provision of R151-4 that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.

(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

R151-4-201. Docket Number and Title.

- (1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.
- (2) At a minimum the docket number shall consist of:
 - (a) a letter code identifying where the matter originated, as follows:
 - (i) CORP-Corporations;
 - (ii) CP-Consumer Protection;
 - (iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;
 - (iv) NAFA-New Automobile Franchise Act;
 - (v) PVFA-Powersport Vehicle Franchise Act;
 - (vi) RE-Real Estate;
 - (vii) AP-Real Estate Appraisers;
 - (viii) MG-Mortgage; and
 - (ix) SD-Securities;
 - (b) a numerical code indicating the calendar year the matter arises; and
 - (c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.
- (3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE I

BEFORE THE (DIVISION)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of
(the application,
petition or license
of John Doe)

(Notice of Agency Action)
(Request for Agency Action)

No. AA-2000-001

R151-4-202. Content and Size of Pleadings.

- Pleadings shall:
 - (1) be double-spaced, typewritten, and presented on standard 8 1/2 x 11 inch white paper; and
 - (2) contain:
 - (a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading; and
 - (b) an appropriate request for relief when relief is sought.

R151-4-203. Signing of Pleadings.

- (1) Pleadings shall be signed by the party or the party's representative and shall show the signer's address.
- (2) The signature is a certification that:
 - (a) the signer has read the pleading; and
 - (b) to the best of the signer's knowledge and belief, there is good ground to support the pleading.

R151-4-204. Amendments to Pleadings.

- (1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.
- (b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.
- (2) A party shall respond to an amended pleading within the later of:
 - (a) the time remaining for response to the original pleading; or
 - (b) ten days after service of the amended pleading.
- (3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

R151-4-205. Response to a Notice of Agency Action.

- (1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.
- (2)(a) A respondent in an informal adjudicative proceeding

may file a response to a notice of agency action.

- (b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.
- (3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:
 - (a) a response to a notice of agency action; or
 - (b) a notice of receipt of request for agency action.

R151-4-301. General Provisions.

- (1) A party may file a motion that is relevant and timely.
- (2) All motions shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.
- (3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for
 - (a) failure to prosecute;
 - (b) failure to comply with this rule (R151-4), except where this rule expressly provides that a matter is not a basis for dismissal;
 - (c) failure to establish a claim upon which relief may be granted; or
 - (d) other good cause basis.

R151-4-302. Time for Filing a Motion to Dismiss.

A motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.

R151-4-303. Memoranda and Affidavits.

- (1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.
- (2) Unless otherwise governed by a scheduling order issued by the presiding officer:
 - (a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;
 - (b) memoranda or affidavits in response to a motion shall be filed no later than 10 days after service of the motion; and
 - (c) a final reply shall be filed no later than five days after service of the response.

R151-4-304. Oral Argument.

- (1) The presiding officer may permit or require oral argument on a motion.
- (2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day on which the party:
 - (a) who did not make the motion could have filed a response if that party does not file a response; or
 - (b) the party who made the motion:
 - (i) replies to the opposing party's response to the motion;
- or
- (ii) could have replied to the opposing party's response to the motion.

R151-4-305. Ruling on a Motion.

- (1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.
- (2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer makes the verbal ruling.
- (3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:
 - (a) oral argument; or

(b) if there is no oral argument, the final submission on the motion as outlined in R151-4-304(2).

(4) The failure of the presiding officer to comply with the requirements of R151-4-305:

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of the motion.

R151-4-306. Motion to Recuse or Disqualify a Board or Commission Member.

(1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.

(b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.

(c) No reply is permitted.

(2)(a) The decision on a motion to recuse or disqualify a Board or Commission member shall be made by the Board or Commission member the motion seeks to recuse or disqualify. A written decision is not necessary.

(b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record.

(c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.

(d) The Division, presiding officer, or filing party may not subject the Board or Commission member to questioning or examination on the motion.

(e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.

(f) Like all interlocutory matters, a decision on a motion to recuse or disqualify a Board or Commission member is not subject to appeal or agency review.

(3) This rule does not apply to any adjudicative proceedings under the New Automobile Franchise Act, Utah Code Ann. Section 13-14-101 et seq., or the Powersport Vehicle Franchise Act, Utah Code Ann. Section 13-35-101 et seq.

R151-4-401. Filing.

(1)(a) Pleadings shall be filed with:

(i) the department or division in which the adjudicative proceeding is being conducted, which:

(A) maintains the official file and should receive original documents; and

(B) shall provide the pleading to the applicable board or commission; and

(ii) an administrative law judge who is conducting all or part of the adjudicative proceeding, whose copy is a courtesy copy.

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a)(i) A filing may be accomplished by hand delivery or by mail to the department or division in which the adjudicative proceeding is being conducted.

(ii) a filing by hand delivery or mail is complete when it is received and date stamped by the department.

(b)(i) A filing may be accomplished by electronic means if the original document is also mailed to the department or

division the same day, as evidenced by a postmark or mailing certificate.

(ii) Filing by electronic means is complete upon transmission if transmission is completed and received during the department's operating hours; otherwise, filing is complete on the next business day.

(iii) A filing by electronic means is not effective unless the department or division receives all pages of the document transmitted.

(iv) The burden is on the party filing the document to ensure that a transmission is properly completed.

R151-4-402. Service.

(1)(a) Pleadings filed by the parties and documents issued by the presiding officer shall be concurrently served on all parties.

(b) The party who files a pleading is responsible for service of the pleading.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Name and Title)

R151-4-501. Applicability.

(1) This part (R151-4-501 to -516) applies only to formal adjudicative proceedings.

(2) Discovery is prohibited in informal adjudicative proceedings.

R151-4-502. Scope of Discovery.

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense of:

(i) the party seeking discovery; or

(ii) another party.

(2)(a) Subject to R151-4-502(3) and R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under R151-4-502(1) and prepared in

anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and
(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by R151-4-504.

R151-4-503. Disclosures Required by Prehearing Order.

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic(s) addressed in the information maintained by each individual; and

(b)(i) a copy of all discoverable documents, data compilations, and tangible things that:

(A) are in the party's possession, custody, or control; and
(B) support the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in R151-4-503(1)(b)(i); and
(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony, which is governed by R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

(i) the party has not fully completed the investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made disclosures.

(4) Disclosures required under R151-4-503 shall be made in writing, signed, and served.

R151-4-504. Disclosures Otherwise Required.

(1)(a) A party shall:

(i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and

(ii) provide a written report pursuant to the requirements for disclosure of expert testimony of Rule 26 of the Utah Rules of Civil Procedure.

(b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by R151-4-504(1) shall be made:

(i) within 30 days after the deadline for completion of discovery; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under R151-4-504(1)(a), within 60 days after the disclosure

made by the other party.

(c) If either party fails to file its disclosure within the time frames in R151-4-504(1), the presiding officer:

(i) shall exclude the expert testimony from the proceeding; and

(ii) may not continue the hearing to allow additional time for the disclosures.

(2)(a) In addition to the disclosures required by R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of Rule 26 of the Utah Rules of Civil Procedure.

(b)(i) The disclosures required by R151-4-504(2) shall be made at least 45 days before the hearing.

(ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:

(A) use of a deposition designated by another party; and

(B) admissibility of materials identified under R151-4-504(2)(a).

(iii) An objection not timely made is waived.

R151-4-505. Other Discovery Methods.

Parties may obtain discovery by one or more of the following methods:

(1) depositions upon oral examination;

(2) production of documents or things;

(3) permission to enter upon land or other property for inspection and other purposes; and

(4) physical and mental examinations.

R151-4-506. Limits on Use of Discovery.

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

(1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:

(a) more convenient;

(b) less burdensome; or

(c) less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the discovery is unduly burdensome or expensive, taking into account:

(a) the needs of the case;

(b) the amount in controversy;

(c) limitations on the parties' resources; and

(d) the importance of the issues at stake in the litigation.

R151-4-507. Protective Orders.

(1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

R151-4-508. Timing, Completion, and Sequence of Discovery.

(1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.

(2)(a) All discovery, except for prehearing disclosures governed by R151-4-504, shall be completed within 120 calendar days after the day on which:

(i) the notice of agency action was issued; or

(ii) the initial decision with respect to a request for agency action was issued.

(b) Factors the presiding officer shall consider in determining whether to shorten this time period include:

(i) whether a party's interests will be prejudiced if the time period is not shortened;

(ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and

(iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.

(c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:

(i) whether the complexity of the case warrants additional discovery time; and

(ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) Notwithstanding R151-4-508(2)(c), the presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule (R151-4), discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

R151-4-509. Supplemented Disclosures and Amended Responses.

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

(a) ordered by the presiding officer; or

(b) a circumstance described in R151-4-509(2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

(i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and

(ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) With respect to testimony of an expert from whom a report is required under R151-4-504:

(i) the duty extends to information contained in the report; and

(ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

(a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and

(b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

R151-4-510. Prehearing Conference - Scheduling the Hearing Date.

(1) Each notice of agency action or initial decision with respect to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

(i) cancellation of the prehearing conference; and

(ii) a default order; and

(c) may contain the date, consistent with R151-4-108, of the scheduled hearing.

(2)(a) The prehearing conference may be in person or telephonic.

(b) All parties, or their counsel, shall participate in the conference.

(c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.

(3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:

(a) if necessary, scheduling an additional prehearing conference;

(b) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;

(c) modifying, if appropriate, a deadline for disclosures;

(d) resolving discovery issues;

(e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;

(f) if not already scheduled, scheduling a hearing date in compliance with R151-4-108; and

(g) dealing with other necessary matters.

(4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.

(5)(a) Notwithstanding any other rule, the presiding officer shall schedule all prehearing matters consistent with R151-4-108.

(b) The presiding officer may:

(i) adjust time frames as necessary to accommodate R151-4-108; and

(ii) schedule appropriate prehearing matters to occur concurrently.

R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1)(a) Every disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge,

information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(2)(a) Every request for discovery or response or objection to discovery shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with this rule (R151-4) and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.

(b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

R151-4-512. Filing of Discovery Requests or Disclosures.

(1) Unless otherwise ordered by the presiding officer:

(a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;

(b) a party may not file any of the disclosures required by the prehearing order or any of the expert witness disclosures required by R151-4-504, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service;

(c) except as may be required by Rule 30 of the Utah Rules of Civil Procedure, depositions shall not be filed; and

(d) a party shall file the disclosures required by R151-4-504.

(2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

R151-4-513. Subpoenas.

(1) Each subpoena:

(a) shall be issued and signed by the presiding officer;

(b) shall state the title of the action;

(c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;

(d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and

(e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.

(2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

(3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.

(b) A person who resides in Utah may be required to appear at a deposition:

(i) in the county where the person resides, is employed, or

transacts business in person; or

(ii) at any reasonable location as the presiding officer may order.

(c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or

(ii) at any reasonable location as the presiding officer may order.

(4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.

(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, with respect to each specific

item or category:

- (A) that inspection and related activities will be permitted as requested; or
- (B) an objection.
- (iii) The party submitting the request may move for an order under R151-4-516 with respect to any:
 - (A) objection;
 - (B) failure to respond to any part of the request; or
 - (C) failure to permit inspection as requested.
- (e) A party who produces documents for inspection shall:
 - (i) produce them as they are kept in the usual course of business; or
 - (ii) organize and label them to correspond with the categories in the request.

R151-4-515. Physical and Mental Examination of Persons.

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:

- (i) submit to a physical or mental examination by a physician; or
- (ii) produce for examination the person in the party's custody or legal control.
- (b) The order:
 - (i) may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties; and
 - (ii) shall specify:
 - (A) the time, place, manner, conditions, and scope of the examination; and
 - (B) the person or persons by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of every other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) R151-4-515(2):

- (i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and
- (ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

R151-4-516. Motion to Compel Discovery - Sanctions.

(1)(a) The discovering party may move for an order compelling discovery if:

- (i) a party fails to make disclosures required by a prehearing order;
- (ii) a party fails to make the disclosures required by R151-4-504;
- (iii) a deponent fails to answer a question;
- (iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Rule 30 of the

Utah Rules of Civil Procedure; or

(v) a party, in response to a request for inspection under R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by R151-4-507.

(d) An evasive or incomplete answer is treated as a failure to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

(i) the department may seek civil enforcement in the district court under Section 63G-4-501; or

(ii) the presiding officer may, for good cause, issue an order:

- (A) that the related matters and facts shall be taken to be established;
- (B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or
- (C) prohibiting the disobedient party from introducing designated matters in evidence;
- (D) striking out pleadings or portions of pleadings;
- (E) dismissing the proceeding or a portion of the proceeding; or
- (F) rendering a judgment by default against the disobedient party.

R151-4-601. Applicability - Scope.

(1)(a) This part (R151-4-601 to -611) applies only to formal adjudicative proceedings.

(b) Discovery is prohibited in informal adjudicative proceedings.

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.

(b) The attendance of witnesses may be compelled by subpoena.

(c) A party may not depose an expert witness.

R151-4-602. General Provisions - Persons who may be Deposed.

(1) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

- (a) has refused a reasonable request by the moving party for an informal interview;
 - (b) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;
 - (c) has refused to answer reasonable questions propounded to him by that party in an informal interview; or
 - (d) will be unavailable to testify at the hearing.
- (3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding.
- (4) The moving party has the burden of demonstrating the need for a deposition.

R151-4-603. Notice of Deposition - Requirements.

(1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Rule 30 of the Utah Rules of Civil Procedure.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

(i) shall designate the person before whom the deposition shall be taken;

(ii) shall designate the manner of recording, preserving and filing the deposition; and

(iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

(i) any objections;

(ii) any changes made by the witness;

(iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by Rule 30 of the Utah Rules of Civil Procedure.

(3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.

(4) Rule 30(b)(6) of the Utah Rules of Civil Procedure shall apply where a deponent is:

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

(5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

R151-4-604. Examination and Cross-Examination.

(1) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-605. Motion to Terminate or Limit Examination.

(1) The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-606. Submission to Witness - Changes - Signing.

A deposition shall be submitted to the witness, changed, and signed pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-607. Certification - Delivery - Exhibits.

(1) The transcript or recording of a deposition shall be certified and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

(2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-608. Persons Before Whom Depositions May Be Taken.

Depositions shall be taken before a certified court reporter holding a current and active license under Utah Code Title 58, Chapter 74, Certified Court Reporters Licensing Act.

R151-4-609. Use of Depositions.

(1) Pursuant to the other provisions of R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:

(a) was present or represented at the taking of the deposition; or

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

(a) to contradict or impeach the testimony of the deponent as a witness; or

(b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

R151-4-610. Objections to Admissibility.

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

R151-4-611. Effect of Errors and Irregularities in Depositions.

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

R151-4-701. Hearings Required or Permitted.

A hearing shall be held in an adjudicative proceedings in which a hearing is:

- (1) required by statute or rule and not waived by the parties; or
- (2) permitted by statute or rule and timely requested.

R151-4-702. Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

- (1) the time period for filing a response to a notice of agency action if a response is required or permitted;
- (2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or
- (3) the filing of the request for agency action.

R151-4-703. Hearings Open to Public - Exceptions.

(1) A hearing in an adjudicative proceeding is open to the public unless closed by:

- (a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act; or
- (b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.

- (b) Deliberations are closed to the public.

R151-4-704. Bifurcation of Hearing.

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

R151-4-705. Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

- (1) opening statement of the party with the burden of proof;
- (2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;
- (3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;
- (4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (5) if the presiding officer finds it to be necessary, rebuttal evidence by the party which has the burden of proof;
- (6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;
- (7) closing argument by the party with the burden of proof;
- (8) closing argument by the opposing party; and
- (9) final argument by the party with the burden of proof.

R151-4-706. Testimony Under Oath.

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

R151-4-707. Electronic Testimony.

(1) As used in this section (R151-4-707), electronic testimony includes testimony by telephone or by other audio or video conferencing technology.

(2)(a) Electronic testimony is permissible in a formal proceeding only:

- (i) on the consent of all parties; or
- (ii) if warranted by exigent circumstances.

(b) Expenses to produce in-person testimony do not constitute an exigent circumstance in a formal proceeding. (c) Electronic testimony generally is permissible in an informal proceeding on the request of a party.

- (3)(a) When electronic testimony is to be presented, the

presiding officer shall require identification of the witness.

- (b) The presiding officer shall provide safeguards to:
 - (ii) assure the witness does not refer to documents improperly; and
 - (iii) reduce the possibility the witness may be coached or influenced during the testimony.

R151-4-708. Standard of Proof.

Unless otherwise provided by statute or a rule applicable to a specific proceeding, the standard of proof in a proceeding under this rule (R151-4), whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

R151-4-709. Burden of Proof.

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

R151-4-710. Default Orders.

(1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.

(2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.

(3) A default order is not required to be accompanied by a separate order.

R151-4-711. Record of Hearing.

(1) The presiding officer shall make a record of all prehearing conferences and hearings.

(2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:

- (i) a certified court reporter licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act; or
- (ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make record of a hearing in an informal proceeding by:

- (i) a method required for a formal proceeding; or
- (ii) minutes or an order prepared or adopted by the presiding officer.

(3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.

(4)(a) If a party is required by R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:

- (i) in a formal adjudicative proceeding, by a certified court reporter; or
- (ii) in an informal adjudicative proceeding, by:
 - (A) a certified court reporter; or
 - (B) a person who is not a party in interest.

(b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(c) Pages and lines in a transcript shall be numbered for referencing purposes.

(d) The party requesting the transcript shall bear the cost of the transcription.

(5) The original transcript of a record of a hearing shall be filed with the presiding officer.

R151-4-712. Fees.

(1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:

- (i) \$18.50 for each day in attendance; and

(ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.

(b) A witness subpoenaed by a party other than the department may:

(i) demand one day's witness fee and mileage in advance; and

(ii) be excused from appearance unless the fee is provided.

(2) Interpreters and translators may receive compensation for their services.

(3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.

(4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

R151-4-801. Requirements and Timeliness.

(1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.

(3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.

(4) The failure of the presiding officer to comply with the requirements of this section (R151-4-801):

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of a motion.

R151-4-802. Effective Date.

The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

R151-4-803. Clerical Mistakes.

(1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:

(a) its own initiative; or

(b) the motion of a party.

(2) Mistakes described in this section (R151-4-803) may be corrected:

(a) at any time prior to the docketing of a petition for judicial review; or

(b) as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-4-901. Availability of Agency Review and Reconsideration.

(1) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(2)(a) Agency review is not available for an order or decision entered by:

(i) the Utah Motor Vehicle Franchise Advisory Board; or

(ii) the Utah Powersport Vehicle Franchise Advisory Board.

(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:

(i) Prelitigation proceedings under Title 78B, Chapter 3,

the Utah Health Care Malpractice Act;

(ii) a request for modification of a disciplinary order; or

(iii) a request under Section 58-1-404(4) for entry into the Diversion Program.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; or

(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

R151-4-902. Request for Agency Review - Transcript of Hearing - Service.

(1) A request for agency review shall:

(a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and

(b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

(a) appropriate legal authority; and

(b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to:

(i) marshal or gather all the evidence in support of the finding; and

(ii) show that despite that evidence, the finding is not supported by substantial evidence.

(c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.

(d) A party challenging a legal conclusion must support the argument with citation to:

(i) relevant authority; and

(ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

(i) certify that the transcript has been ordered;

(ii) notify the department when the transcript will be available; and

(iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5)(a) A party seeking agency review shall, in the manner described in R151-4-401 and -402, file and serve on all parties

copies of correspondence, pleadings, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

(6) Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.

R151-4-903. Stay Pending Agency Review.

(1)(a) With a 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) If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a request for a stay in writing within ten days from the date the stay is requested.

(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.

(d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(b) The department may issue:

(i) an order granting the motion for a stay;

(ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;

(iii) a partial stay; or

(iv) an order denying the motion for a stay.

R151-4-904. Agency Review - Memoranda.

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

(i) this rule (R151-4); and

(ii) a scheduling order entered by the department.

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

R151-4-905. Agency Review - Standards of Review.

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

R151-4-906. Agency Review - Type of Relief - Order on Review.

(1) The type of relief available on agency review shall be

the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-4-907. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(2) The executive director may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review if all of the criteria in R151-4-907 are met.

KEY: administrative procedures, adjudicative proceedings, government hearings
June 21, 2012

13-1-6
63G-4-102(6)

R151. Commerce, Administration.**R151-35. Powersport Vehicle Franchise Act Rule.****R151-35-1. Title.**

This rule shall be known as the "Powersport Vehicle Franchise Act Rule".

R151-35-2. Authority - Purpose.

In accordance with the Powersport Vehicle Franchise Act, Title 13, Chapter 35, this rule governs adjudicative proceedings before the Utah Powersport Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-35-104(2).

R151-35-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Utah Administrative Procedures Act, any adjudicative proceedings under the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-4.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-35-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH POWERSPORT VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-4-201 to -205.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-35-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) Annual Renewals. The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department as its initial or renewal registration or may submit a registration or renewal request in another format so long as that request contains the following information:

- (a) Name of dealership/manufacturer;
- (b) Address of dealership/manufacturer;
- (c) Owners or stockholders and percentage of holding (5% or above only);
- (d) Line-makes manufactured, distributed, or sold;
- (e) If applicable, dealer number; and
- (f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the Powersport Vehicle Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: motorcycles, powersport vehicles, off road vehicles, franchises

May 2, 2006

13-35-101 et seq.

Notice of Continuation June 5, 2012

R152. Commerce, Consumer Protection.**R152-34. Postsecondary Proprietary School Act Rules.****R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester

credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonably require from time to time.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(4) To be exempt under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) The division shall determine an institution's status in

accordance with the categories contained in this section.

(6) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(7) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) A disclosure as required by R152-34-7(1).

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(8) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The Division shall refuse to register an institution when the Division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the Division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in subsection (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The Division collects the following fees in accordance with U.C.A. Section 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the Division.

(B) The Division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the Division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the Division will be

used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the Division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution shall have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, an income statement, a statement of stockholders' equity, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; and either:

(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or

(ii) A review of the institution's financial statement performed by a certified or licensed public accountant.

(b) If the institution has been determined to be bond exempt under Subsection (14) and has total gross tuition income that does not exceed \$50,000, the institution may, in lieu of the financial statements set forth in Subsection (8)(a), provide to the Division;

(i) a copy of the institution's most recently filed federal tax return; or

(ii) if the institution is not required to file a return, then a copy of the owner's most recently filed federal tax return.

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five- hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five- hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of three hundred thousand dollars (\$300,000).

(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s), at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed \$200 or an

alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

- (i) the student directly; or
 - (ii) a lender or any other entity on behalf of the student.
- (g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:
 (A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(i) An institution shall include the following registration

and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(A) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(B) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(C) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of

(1) and (2) above, or until such time as the institution provides documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary schools, registration, requirements, consumer protection
August 9, 2010 13-2-5(1)
Notice of Continuation June 14, 2012

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section

58-1-404.

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

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

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

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

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

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

(a) Mitigating circumstances include:

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

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

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

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

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

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

- (vii) remorse.
- (b) The following factors should not be considered as mitigating circumstances:
- (i) forced or compelled restitution;
 - (ii) withdrawal of complaint by client or other affected persons;
 - (iii) resignation prior to disciplinary proceedings;
 - (iv) failure of injured client to complain; and
 - (v) complainant's recommendation as to sanction.
- (17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).
- (18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).
- (19) "Probation" means disciplinary action placing terms and conditions upon a license;
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
 - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.
- (21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.
- (22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.
- (23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.
- (24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.
- (25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or
 - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.
- (27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.
- (28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.
- (29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.
- (30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.
- (31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions

of law and do not constitute a reprimand, but which may address any or all of the following:

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and
- (d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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.

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

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55,

by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

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

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

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

(ii) informal adjudicative proceedings described in Subsections R156-46b-201(1)(d), (h), (j), (m), (n), (p), and (t), and R156-46b-202(2)(a), (b) and (c)(ii), however resolved, including memorandums of understanding and stipulated settlements.

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

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

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

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), (o), (q)(ii) and (iii), (r)(ii) and (iii), (s)(ii) and (iii), and R156-46b-202(2)(c)(iii).

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

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

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

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

referred by the program coordinator to the board for action.

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

(a) Commission.

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

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

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

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

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

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

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

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

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

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

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

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

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(c) as required by Subsection 58-55-103(1)(b)(iv).

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis

for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

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

except as otherwise provided in Title 58 or Title R156.

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

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

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

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

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

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

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

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

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

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

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

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

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

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

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

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

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

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

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

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

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

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer,

practice monitoring group, entity or association;

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

(13) psychological evaluations; or

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

R156-1-305. Inactive Licensure.

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

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

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

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

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

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

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

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Architect	May 31	even years
(4) Athlete Agent	September 30	even years
(5) Athletic Trainer	May 31	odd years
(6) Audiologist	May 31	odd years
(7) Barber	September 30	odd years
(8) Barber School	September 30	odd years
(9) Building Inspector	November 30	odd years
(10) Burglar Alarm Security	November 30	even years
(11) C.P.A. Firm	September 30	even years
(12) Certified Court Reporter	May 31	even years
(13) Certified Dietitian	September 30	even years
(14) Certified Medical Language Interpreter	March 31	odd years
(15) Certified Nurse Midwife	January 31	even years
(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Mental Health Counselor	September 30	even years
(21) Clinical Social Worker	September 30	even years
(22) Construction Trades Instructor	November 30	odd years
(23) Contractor	November 30	odd years
(24) Controlled Substance License	Attached to primary license renewal	
(25) Controlled Substance Precursor	May 31	odd years
(26) Controlled Substance Handler	May 31	odd years
(27) Cosmetologist/Barber	September 30	odd years
(28) Cosmetology/Barber School	September 30	odd years
(29) Deception Detection	November 30	even years
(30) Dental Hygienist	May 31	even years
(31) Dentist	May 31	even years
(32) Direct-entry Midwife	September 30	odd years
(33) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(34) Electrologist	September 30	odd years
(35) Electrology School	September 30	odd years
(36) Elevator Mechanic	November 30	even years
(37) Environmental Health Scientist	May 31	odd years
(38) Esthetician	September 30	odd years
(39) Esthetics School	September 30	odd years
(40) Factory Built Housing Dealer	September 30	even years
(41) Funeral Service Director	May 31	even years
(42) Funeral Service Establishment	May 31	even years
(43) Genetic Counselor	September 30	even years
(44) Health Facility Administrator	May 31	odd years
(45) Hearing Instrument Specialist	September 30	even years
(46) Internet Facilitator	September 30	odd years
(47) Landscape Architect	May 31	even years

(48)	Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
(49)	Licensed Practical Nurse	January 31	even years
(50)	Licensed Substance Use Disorder Counselor	May 31	odd years
(51)	Marriage and Family Therapist	September 30	even years
(52)	Massage Apprentice, Therapist	May 31	odd years
(53)	Master Esthetician	September 30	odd years
(54)	Medication Aide Certified	March 31	odd years
(55)	Nail Technologist	September 30	odd years
(56)	Nail Technology School	September 30	odd years
(57)	Naturopath/Naturopathic Physician	May 31	even years
(58)	Occupational Therapist	May 31	odd years
(59)	Occupational Therapy Assistant	May 31	odd years
(60)	Optometrist	September 30	even years
(61)	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(62)	Outfitter/Hunting Guide	May 31	even years
(63)	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
(64)	Pharmacist	September 30	odd years
(65)	Pharmacy Technician	September 30	odd years
(66)	Physical Therapist	May 31	odd years
(67)	Physical Therapist Assistant	May 31	odd years
(68)	Physician Assistant	May 31	even years
(69)	Physician and Surgeon, Online Prescriber	January 31	even years
(70)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(71)	Podiatric Physician	September 30	even years
(72)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(73)	Private Probation Provider	May 31	odd years
(74)	Professional Engineer	March 31	odd years
(75)	Professional Geologist	March 31	odd years
(76)	Professional Land Surveyor	March 31	odd years
(77)	Professional Structural Engineer	March 31	odd years
(78)	Psychologist	September 30	even years
(79)	Radiologic Technologist, Radiology Practical Technician	May 31	odd years
(80)	Radiologist Assistant, Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
(81)	Registered Nurse	January 31	odd years
(82)	Respiratory Care Practitioner	September 30	even years
(83)	Security Personnel	November 30	even years
(84)	Social Service Worker	September 30	even years
(85)	Speech-Language Pathologist	May 31	odd years
(86)	Veterinarian	September 30	even years
(87)	Vocational Rehabilitation Counselor	March 31	odd years

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

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

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

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be

extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

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

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

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

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

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

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

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

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

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

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

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

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

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

conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

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

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

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

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

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

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

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the Division's action as permitted by Subsection 63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the Division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

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

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

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

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

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

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

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

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

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

requests review; and

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

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

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

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

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

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

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

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

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

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

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure;

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

(c) pay the established license fee for a new applicant for licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

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

(a) submit an application for licensure complete with all

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

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

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

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

R156-1-308I. Reinstatement of Licensure and Relicensure - Term of Licensure.

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

R156-1-310. Cheating on Examinations.

(1) Policy.

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

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the

circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

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

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

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

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

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

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

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

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

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

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

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

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

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

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

R156-1-404d. Diversion - Procedures.

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

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

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

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

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

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

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

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

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

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

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

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or

applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

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

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

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

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

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

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE	
FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
SECOND OFFENSE	
58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such

information under the Government Records Access and Management Act.

KEY: diversion programs, licensing, occupational licensing, supervision

June 7, 2012	58-1-106(1)(a)
Notice of Continuation January 5, 2012	58-1-308
	58-1-501(4)

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.
R156-9-101. Short title.

This rule shall be known as the "Funeral Service Licensing Act Rule".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsection 58-9-102(18).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-501.

R156-9-103. 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 9.

R156-9-104. 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.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(d) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) An applicant for licensure as a funeral service intern shall answer correctly all the law and rule questions in the open book examination contained in the application.

(3) An applicant for licensure as a funeral service director, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:

(a) no more than three times within a six month period; and

(b) no earlier than three months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308a.

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

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:

(1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(3) The standards for qualified continuing professional education are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All mortuaries shall be kept and maintained in a clean and sanitary condition and all embalming tables, sinks, receptacles, instruments and other appliances used in embalming and cremation of dead human bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, intern, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalmings, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the Board and Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-403. Death Registration - Removal of Body -

Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body to another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or this Funeral Service Licensing Act Rule;

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by this

rule;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the Division on forms provided by the Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a funeral service establishment or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement

contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model.

(1) To assist applicants for a funeral service establishment license, the Division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-9-701.

(2) In accordance with the provisions of Subsection 58-9-302(3)(e), a funeral service establishment must submit to the Division a copy of the preneed contract form it intends to market for initial licensure and then ensure that if any amendments are made to the preneed section in the future, the amendments shall meet the requirements set forth in Section 58-9-701 before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(4) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007 shall continue to contain a clause indicating approval by the Division.

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts: "Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the funeral service establishment have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-614. Funeral Service Establishment Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-615. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

(1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the

funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-616. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at

a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-617. Maximum Revocation Fee.

If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-618. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral directors, preneed funeral arrangements

June 21, 2012

58-1-106(1)(a)

Notice of Continuation September 26, 2011

58-1-202(1)(a)

58-9-504

**R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land
Surveyors Licensing Act Rule.**

R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is hazardous materials as defined in Section 307 of the 2009 International Building Code and Section 2703 of the 2009 International Fire Code.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) is work that affects not greater than 49 occupant as determined in Section 1004 of the 2009 International Building Code;

(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the 2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "NCEES FE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

(13) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses to professional engineers, professional structural engineers, or professional land surveyors.

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(16) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology (ABET, Inc.).

(17) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. 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 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate

degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or higher education degree and completion of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying which shall include the following courses:

(a) A successful completion of a minimum of one course in each of the following content areas:

- (i) boundary law;
- (ii) writing legal descriptions;
- (iii) photogrammetry;
- (iv) public land survey system;
- (v) studies in land records or land record systems; and
- (vi) surveying field techniques.

(b) The remainder of the 30 semester hours or 42 quarter hours may be made up of successful completion of courses from the following content areas:

- (i) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;
- (ii) control systems;
- (iii) drafting, not to exceed six semester hours or eight quarter hours;
- (iv) geodesy;
- (v) geographic information systems;
- (vi) global positioning systems;
- (vii) land development; and
- (viii) survey instrumentation.

(c) The degree and courses shall be completed in an education institution accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on College and Universities;
- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

(d) If the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES Credential Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Education Standard. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or land surveying, not to exceed a total of 10 semester hours noted by the credential evaluation, may be satisfied by successfully completing the deficiencies in course

work at a recognized college or university approved by the Division in collaboration with the Board.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the Board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to

supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the Division in collaboration with the Board in accordance with the following:

(A) The qualifying experience shall be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the Board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of

engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) The qualifying experience shall be obtained after meeting the education requirements.

(c) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(d) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

- (A) steel;
- (B) concrete;
- (C) wood; or
- (D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(d), each applicant for licensure as a professional land surveyor shall submit verification of four years of full time or equivalent part time qualifying experience in land surveying obtained under the supervision of one or more licensed professional land surveyors which experience may be obtained before, during or after completing the education requirements for licensure. The experience shall be certified by the licensed professional land surveyor supervisor.

(b) The four years of qualifying experience shall comply with the following:

(i) two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;

- (E) traverse;
- (F) staking procedures;
- (G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and
- (ii) two years of experience should be specific to office surveying, including all of the following:
 - (A) drafting (includes computer plots and layout);
 - (B) reduction of notes and field survey data;
 - (C) research of public records;
 - (D) preparation and evaluation of legal descriptions; and
 - (E) preparation of survey related drawings, plats and record of survey maps.

R156-22-302d. Qualifications for Licensure - Examination Requirements.

- (1) Examination Requirements - Professional Engineer.
 - (a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:
 - (i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:
 - (A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or
 - (B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.
 - (ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and
 - (iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the license application form.
 - (b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).
 - (c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(1) after having successfully completed the education requirements set forth in Subsection R156-22-302b(1).
 - (d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.
- (2) Examination Requirements - Professional Structural Engineer.
 - (a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:
 - (i) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.
 - (ii) the NCEES FE examination with a passing score as established by the NCEES;
 - (iii)(A) the NCEES SE examination;
 - (B) prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;
 - (C) prior to January 1, 2004, an equivalent 16-hour state

- written examination with a passing score; or
- (D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.
- (b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).
- (3) Examination Requirements - Professional Land Surveyor.
 - (a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:
 - (i) the NCEES FS examination with a passing score as established by the NCEES;
 - (ii) the NCEES PS examination with a passing score as established by the NCEES; and
 - (iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:
 - (A) no sooner than 30 days following any failure, up to three failures; and
 - (B) no sooner than six months following any failure thereafter.
 - (b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant must have successfully completed the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).
 - (4) Examination Requirements for Licensure by Endorsement.
 - In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:
 - (a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the Board may waive one or more of the following examinations under the following conditions:
 - (i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;
 - (ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.
 - (b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.
 - (c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS

examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not fewer than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

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

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

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

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

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

(7) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with Section R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed 24 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Rules of Professional Conduct", as published in the NCEES Model Rules, revised August 2010, which is hereby incorporated by reference.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 22:

TABLE

FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	\$ 800.00	\$1,600.00
58-1-501(1)(b)	\$1,000.00	\$2,000.00
58-1-501(1)(c)	\$1,000.00	\$2,000.00
58-1-501(1)(d)	\$1,000.00	\$2,000.00
58-22-501(1)	\$ 800.00	\$1,600.00
58-22-501(2)	\$ 800.00	\$1,600.00
58-22-501(3)	\$ 800.00	\$1,600.00
58-22-501(4)	\$ 800.00	\$1,600.00
58-22-501(5)	\$ 800.00	\$1,600.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

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

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

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

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

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

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

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

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

June 21, 2012 **58-22-101**
Notice of Continuation June 25, 2012 **58-1-106(1)(a)**
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-40a. Athletic Trainer Licensing Act Rule.****R156-40a-101. Title.**

This rule is known as the Athletic Trainer Licensing Act Rule.

R156-40a-102. Definitions.

In accordance with Subsection 58-1-203(1)(e), the definition of unprofessional conduct in Title 58, Chapters 1 and 40 is further defined in Section R156-40a-502.

R156-40a-104. 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 40a.

R156-40a-105. 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.

R156-40a-302a. Qualifications for Licensure.

In accordance with Subsection 58-40a-302(1), the "athletic training curriculum requirement" shall be the curriculum program standard for accreditation set forth in the Standards for the Accreditation of Entry-Level Athletic Training Education Programs, revised June 8, 2006, published by the Commission on Accreditation of Athletic Training Education (CAATE), which is hereby adopted and incorporated by reference.

R156-40a-304. 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 40a is established by rule in Subsection R156-1-308a(1).

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

R156-40a-502. Unprofessional Conduct.

"Unprofessional conduct" includes violating any provision of the Board of Certification Standards of Professional Practice, implemented January 1, 2006, which is hereby adopted and incorporated by reference.

KEY: licensing, occupational licensing, athletic trainers**June 28, 2012****58-40a-101****Notice of Continuation November 21, 2011****58-1-106(1)(a)****58-1-202(1)(a)**

R162. Commerce, Real Estate.**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.****R162-2c-101. Title.**

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) The acronym "BLM" stands for branch lending manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific preclicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific preclicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Control person" is defined in Section 61-2c-102(1)(p).

(6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.

(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.

(9) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(11)(a) "Lending manager" is defined in Section 61-2c-102(1)(aa).

(b) "Lending manager license" includes:

(i) a principal lending manager license;

(ii) an associate lending manager license; and

(iii) a branch lending manager license.

(12) The acronym "LM" stands for lending manager and includes the following licensing designations:

(a) principal lending manager;

(b) associate lending manager; and

(c) branch lending manager.

(13) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.

(16) "Other trade name" means any assumed business name under which an entity does business.

(17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the

following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(a) Social Security number;

(b) financial account number, or credit or debit card number; or

(c) driver license number or state identification card number.

(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the PLM, managing principal, or qualified person who is identified on the MUI form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstate" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) obtain a unique identifier through the nationwide database;

(v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific preclicensing education as approved by the division;

(vi)(A) successfully complete 20 hours of pre-licensing

education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv)(A) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-202(1);

(b) evidence competency to transact the business of

residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database; and

(ii) evidence that the individual has taken and passed:

(A) the 20-hour national mortgage loan originator prelicensing course; and

(B) the mortgage loan originator examinations that:

(I) meet the requirements of Section 61-2c-204.1(4);

(II) are approved and administered through the nationwide database; and

(III) consist of a national component and a Utah-specific state component;

(e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

(i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages; or

(ii)(A)(I) two years full-time experience as described in this Subsection (2)(e)(i)(A); and

(II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

(B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and

(II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b;

(f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;

(g) take and pass a lending manager examination as approved by the commission;

(h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and

(ii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

(A) the principal lending manager;

(B) an associate lending manager; or

(C) a branch lending manager;

(k) authorize a criminal background check and submit fingerprints through the nationwide database;

(l) authorize the nationwide database to provide the individual's credit report to the division for review;

(m) complete, sign, and submit to the division a social security verification form as provided by the division; and

(n) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Mortgage entity.

(a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(ii) establish that all control persons meet the requirements

for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(IV) the name of any individuals who may serve as control persons;

(V) the entity's registered agent; and

(VI) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (4).

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

(5) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(6) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the LM exam shall be valid for 90 days.

(7) Incomplete LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(8) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(9) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

- (A) moral character;
- (B) honesty;
- (C) integrity;
- (D) truthfulness; or
- (E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:

- (A) Securities and Exchange Commission;
- (B) New York Stock Exchange; or
- (C) Financial Industry Regulatory Authority;
- (v) had a permanent injunction entered against the individual:

- (A) by a court or administrative agency; and
- (B) on the basis of:
 - (I) conduct or a practice involving the business of residential mortgage loans; or
 - (II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

- (i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;
- (ii) the circumstances that led to any criminal conviction or plea agreement under consideration;
- (iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;
- (iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
- (v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
- (vi) court findings of fraudulent or deceitful activity;
- (vii) evidence of non-compliance with court orders or conditions of sentencing;
- (viii) evidence of non-compliance with:
 - (A) terms of a diversion agreement still subject to prosecution;
 - (B) a probation agreement; or
 - (C) a plea in abeyance; or
- (ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;
- (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
- (c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;
- (d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;
- (e) the extent and quality of the applicant's training and education in mortgage lending;
- (f) the extent and quality of the applicant's training and education in business management;
- (g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

- (h) evidence of disregard for licensing laws;
- (i) evidence of drug or alcohol dependency;
- (j) sanctions placed on professional licenses; and
- (k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

- (i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

- (b) give particular consideration to:
 - (i) outstanding civil judgments;
 - (ii) outstanding tax liens;
 - (iii) foreclosures;
 - (iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.
 (a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

- (i) contact information, including:
 - (A) name, phone number, and address of the physical facility;
 - (B) name, phone number, and address of any school director;
 - (C) name, phone number, and address of any school owner; and
 - (D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

- (iii) school description, including:
 - (A) type of school; and
 - (B) description of the school's physical facilities;
- (iv) list of courses offered;
- (v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

- (vii) proof that each instructor:
 - (A) has been certified by the division; or
 - (B) is exempt from certification under Subsection 203(5)(f);

(viii) schedule of courses offered, including the days, times, and locations of classes;

(ix) statement of attendance requirements as provided to students;

- (x) refund policy as provided to students;
- (xi) disclaimer as provided to students; and
- (xii) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e., lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable

to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal. A certification for a 15-hour Utah-specific prelicensing course expires two years from the date of certification.

(4) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in this Subsection (5)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association;
or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising;
and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of continuing education courses, an individual shall certify through the nationwide database.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for Utah-specific preclicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific preclicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (5)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (5)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, eight hours of continuing education:

(A) approved through the nationwide database;

(B) consisting of:

(I) three hours federal laws and regulations;
 (II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination; and

(C) non-duplicative of courses taken in the same or preceding renewal period.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete eight hours of continuing education:

(i) in topics listed in this Subsection (3)(a)(i); and

(ii)(A) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(B) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific principal lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license.

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s); and

(C) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual;

(vi) license status (sponsored or non-sponsored); and

(vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan originator may perform loan processing activities regardless of whether:

(a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or

(b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s)

that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;
- (iv) turn all records over to the sponsoring entity for proper retention and disposal; and
- (v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

- (i) charge for services not actually performed;
- (ii) require a borrower to pay more for third party services than the actual cost of those services;
- (iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;
- (iv) alter an appraisal of real property; or
- (v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:
 - (A) providing a buyer or seller of real estate with a comparative market analysis;
 - (B) assisting a buyer or seller to determine the offering price or sales price of real estate;
 - (C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
 - (D) advertising the sale of real estate by use of any advertising medium;
 - (E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
 - (F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

- (i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;
- (ii) owns real property that the mortgage loan originator offers "for sale by owner"; or
- (iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:
 - (A) the owner's contact information;
 - (B) the owner's role;
 - (C) the mortgage loan originator's contact information; and
 - (D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or
- (iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:
 - (A) contact information for the brokerage;
 - (B) role of the brokerage;
 - (C) mortgage loan originator's contact information; and
 - (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

- (i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

- (A) federal law governing residential mortgage lending;
- (B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and
- (C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;
- (iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:
 - (A) directing the details and means of their work activities;
 - (B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

- (D) prohibiting unlicensed staff from engaging in any activity that requires licensure;
- (iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

- (A) complies with HUD/FHA requirements;
- (B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

- (A) the PLM's sponsoring entity; and
- (B) the entity's sponsored mortgage loan originators; and
- (ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

- (i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;
 (B) inspection fees;
 (C) credit reporting fees; and
 (D) insurance premiums;
 (ii) retain and dispose of records according to R162-2c-302; and
 (iii) comply with a division request for information within 10 business days of the date of the request;
 (iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and

(v) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(x) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught;

(ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b. Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

(i) Utah; or

(ii) another state.

(b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for

employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to \$300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

- (A) borrower name;
- (B) property address;
- (C) transaction closing date;
- (D) date of incentive payment;
- (E) name of employee receiving incentive payment; and
- (F) amount paid; and

(ii) make such records available to the division for audit or inspection upon request.

(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:

(a) solicit or advertise to the client regarding financing for a Utah property; or

(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

- (i) application forms;
- (ii) disclosure forms;
- (iii) truth-in-lending forms;
- (iv) credit reports and the explanations therefor;
- (v) conversation logs;
- (vi) verifications of employment, paycheck stubs, and tax returns;
- (vii) proof of legal residency, if applicable;
- (viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;
- (ix) underwriter denials;
- (x) notices of adverse action;
- (xi) loan approval;
- (xii) name and contact information for the borrower in the transaction; and
- (xiii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business

of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

- (i) an original or renewal application for a license;
- (ii) an original or renewal application for a school certification;
- (iii) an original or renewal application for a course certification; and
- (iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

- (i) be in writing;
- (ii) be signed by the requestor; and
- (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

- (i) a complaint against a licensee; and
- (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

- (i) a proceeding on an original or renewal application for a license;
- (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and
- (iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

- (a) the issuance of an original or renewed license when the application has been approved by the division;
- (b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;
- (c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;
- (d) the denial of an application for an original or renewed license on the ground that it is incomplete;
- (e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding

by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage prelicensing instructor; and

(e) second-lien residential loan originator.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through

additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement
June 7, 2012

61-2c-103(3)
61-2c-402(4)(a)

R212. Community and Culture, History.**R212-12. Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds.****R212-12-1. Scope and Applicability.**

To provide grants to assist cemeteries, computerize their records, and to develop a centralized database of names, dates of death, burial locations, and other information. This data base will include data on individuals interred in cemeteries and burial locations where a previous record exists regarding the burial in accordance with UCA 9-8-203(3)(c).

R212-12-2. Definitions.

1. "Board" means the Board of State History.
2. "Burial locations" means locations of human burials outside of established cemeteries where written records exist on the deceased.
3. "Burial Plot" means the burial location of an individual within a cemetery.
4. "Cemeteries" means formal groupings of burial locations, including public and private facilities, whether abandoned or currently used and maintained.
5. "Director" means the Director of the Division of State History.
6. "Division" means the Division of State History.
7. "Eligible Organizations" means cemeteries, genealogical associations, and other nonprofit groups interested in cemeteries and burial locations.
8. "GIS" means Geographic Information System. A system that links information to geographic locations.
9. "In kind" means volunteer hours, labor, equipment, etc., to match grant contributed.
10. "Matching grants" means grants made to eligible organizations that are matched, ordinarily on a fifty/fifty basis, through cash or in kind.
11. "Record" means existing record of name and other available information on the interred individual.
12. "Computerized record" means an electronic version of a record meeting the standards established by the Division.

R212-12-3. Application and Distribution of Funds.

Eligible organizations may apply for matching grants on a form approved by the Division. Matching grants shall be provided to the extent that funding is available. No grant will be awarded to any single cemetery for more than \$10,000. Larger cemeteries needing more than \$10,000 may reapply in phases. Successful applicants may request fifty percent of the funds at the time of approval of the contract. The second fifty percent will be distributed upon receipt of acceptable final report and computerized records in the format agreed upon.

Grants will be allocated to applying eligible organizations on a first come, first served basis. The Division will award the grants and provide a list of successful applicants to the Board.

R212-12-4. Reports and Deliverables.

The grantee must submit complete computer files for the project in a format approved by the Division. The Division may verify the accuracy of the information prior to making final payment. In addition, a final report shall be completed by the grantee in a format designated by the Division. The report shall include a summary of the project, an accounting of matching share contributions, and a request for final payment.

KEY: burial, cemetery, plots

November 4, 2002

Notice of Continuation May 31, 2012

9-8-203(3)(c)

R223. Community and Culture, Library.**R223-1. Adjudicative Procedures.****R223-1-1. Authority and Purpose.**

The State Library Division, Department of Community and Culture, State of Utah, hereby declares, in accordance with Utah Code Annotated Section 63G-4-202, that all programs, actions, or proceedings carried out under the authority of the State Library Division by State Library Division personnel which require adjudicative procedures in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Annotated Title 63G, Chapter 3, shall be conducted informally according to the provisions of rules adopted under Utah Code Annotated Title 63G, Chapter 4.

R223-1-2. Procedures.

The requirement that all adjudicative procedures be conducted informally shall apply to all current programs, actions, or proceedings for which adjudicative procedures are required and to all future programs, actions, or proceedings carried out under the authority of the State Library Division for which adjudicative procedures are required.

KEY: administrative procedures, adjudicative procedures, informal procedures

1988

Notice of Continuation June 5, 2012

63G-4-202

63G-4-202(2)

63G-4-203

R251. Corrections, Administration.**R251-401. Supervision Fees.****R251-401-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-21, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.

R251-401-2. Definitions.

(1) "Board" means Board of Pardons and Parole.

(2) "Fee suspension" means temporary, time-limited suspension of required fee payment when inability to pay is a result of short-term, substantial hardship.

(3) "Fee waiver" means long-term waiver of fee payment when the substantial hardship causing an inability to pay is highly unlikely to change during the period of supervision.

(4) "Substantial hardship" means any condition which would cause gross monthly household income to be below the Federal Poverty Level.

(5) "UDC" means Utah Department of Corrections.

R251-401-3. Policy.

It is the policy of the Department that:

(1) in accordance with Section 64-13-21, of the Utah Code, offenders on probation or parole shall be assessed a monthly supervision fee of \$30.00 if the offense was committed after May 3, 1993;

(2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor or if the offender owes restitution to a victim;

(3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;

(4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;

(5) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;

(6) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and

(7) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

KEY: fees, supervision, offenders

October 25, 2007

64-13-21

Notice of Continuation June 5, 2012

R277. Education, Administration.**R277-104. ADA Complaint Procedure.****R277-104-1. Definitions.**

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the Superintendent, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities who are not USOE or USOR employees in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "Days" means calendar days.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual consistent with the Americans with Disabilities Act, 42 U.S.C. 12201.

E. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

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

G. "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. This rule is directed at non-employees, including all types and periods of employment, of the Board, the USOE or the USOR.

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

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

J. "USOR" means the Utah State Office of Rehabilitation.

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107 which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, as amended.

B. The purpose of this rule is to establish USOE and USOR procedures for non-USOE, non-USOR and non-Board employees to file complaints under the federal ADA law and to provide appropriate classification of the records of complaints and appeals.

C. 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 the USOE or USOR, or be subjected to discrimination by the USOE or USOR.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 30 days from the date of the alleged act of discrimination.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another format reasonable for the individual and the USOE or USOR.

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 USOE's or USOR's alleged discriminatory action in sufficient detail to inform the USOE or USOR 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 legal representative.

R277-104-4. 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 USOE's and USOR's legal, human resource, budget, and State Risk Management staff in determining what action, if any, shall be taken on the complaint.

R277-104-5. ADA Coordinator Recommendation.

A. Within 30 days, the ADA Coordinator shall make a recommendation outlining what action, if any, shall be taken by the USOE or USOR on the complaint to the Superintendent, Executive Director, or both depending upon the circumstances of the complaint.

B. If the ADA Coordinator does not make a recommendation to the Superintendent within 30 days, the ADA Coordinator shall notify both the complainant and the Superintendent that the decision is delayed and provide a date certain for the investigation recommendation to be provided.

R277-104-6. Superintendent or the Executive Director or Both Review and Decision.

A. The Superintendent shall review the recommendation of the ADA Coordinator and make a final decision about action to be taken, if any, by the USOE or USOR.

B. The Superintendent shall provide a written decision to the complainant no more than 10 working days from the receipt of the ADA Coordinator's recommendation.

C. In making the decision, the Superintendent shall consult with the Executive Director if necessary and may discuss the investigation with the ADA Coordinator or other USOE or USOR employees, may gather additional information and interview other individuals with relevant information or expertise and shall give appropriate deference to the ADA Coordinator's fact finding and review of information.

D. The Superintendent's decision is the final USOE and USOR administrative decision regarding the complaint.

(1) If the complaint and recommendation is solely about USOR services or facilities, the Superintendent shall consult with the Executive Director in making the decision.

(2) If the complaint and decision include USOE actions or facilities only, the Superintendent shall make the final administrative decision.

R277-104-7. Classification of Records.

A. The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent issues the decision.

B. Any portions of the record which pertain to individual's medical condition shall remain classified as private, as defined under Section 63G-2-302, or controlled, as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as protected information.

C. The final written decision of the Superintendent shall be public information.

R277-104-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies

available to the individuals under Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with 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: complaints, disabled persons
June 7, 2012
Notice of Continuation June 2, 2008

28 CFR 35.107

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 be enrolled in a regional applied technology college created under Title 53B, Chapter 2a, Utah College of Applied Technology;

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

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

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

(g)(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) 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(8).

(d) Electronic High School courses 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. Pursuant to Section 53A-1-603.5, LEAs shall:

(1) use the SSID system maintained by the USOE to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier.

(a) The number shall be assigned to a student upon enrollment into a public school program or a public school-funded program.

(b) The number shall not be the student's social security number or contain any personally identifiable information about the student.

(2) 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.

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

June 7, 2012

Notice of Continuation October 5, 2007

Art X Sec 3
53A-1-401(3)
53A-1-402(1)(e)
53A-1-404(2)
53A-1-301(3)(d)
53A-3-404
53A-3-410

R277. Education, Administration.**R277-420. Aiding Financially Distressed School Districts.****R277-420-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Interfund transfer" means a transaction which withdraws money from one fund and places it in another without recourse. Interfund transfers are regulated by statute and Board rules. Interfund transfers do not include interfund loans in which money is temporarily withdrawn from a fund with full obligation for repayment during the fiscal year.
- C. "School district," for purposes of this rule, means school district under the direction of the local board of education.
- D. "State Superintendent" means the State Superintendent of Public Instruction.
- E. "USOE" means the Utah State Office of Education.
- F. "Without recourse" means there is no obligation to return withdrawn money to the fund from which it was transferred.

KEY: education finance**June 7, 2012****Notice of Continuation October 5, 2007****53A-19-105****53A-1-401(3)****53A-19-103****R277-420-2. Authority and Purpose.**

- A. This rule is authorized by Section 53A-19-105(5) which requires the Board to develop standards for defining and aiding financially distressed school districts, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to specify the eligibility requirements for and the procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts.

R277-420-3. Eligibility.

To qualify as a financially distressed school district, a school district shall meet all of the following requirements:

- A. Have a deficit of three percent or more in its year end unappropriated maintenance and operation fund balance following a reduction for any amount in an undistributed reserve.
- B. Be unable to meet its financial obligations in a timely manner.
- C. Be unable to reduce the maintenance and operation deficit by twenty-five percent in its budget for the next year.
- D. Have made reasonable, local efforts to eliminate the deficit.
- E. Be financially incapable of meeting statewide educational standards adopted by the Board.
- F. Have a deficit resulting from circumstances not subject to administrative decisions. This judgment shall be made following an on-site visit and consultation with the school district and local school board by USOE staff.

R277-420-4. Procedures for Making Interfund Transfers.

- A. A local school board applying to qualify for an interfund transfer under this rule shall request that the USOE visit the school district, conduct an audit, and assist the local school board and district staff in developing a plan to eliminate the deficit.
- B. The school district shall meet the eligibility requirements of R277-420-3 and be approved as a financially distressed school district by the Board or its designee.
- C. A school district designated as financially distressed may make nonrecurring or nonroutine interfund transfers to the maintenance and operation fund upon the approval of the Board or its designee.
- D. The interfund transfer shall be established by the school district under the direction of the local school board in an undistributed reserve account consistent with Section 53A-19-103.

R277. Education, Administration.**R277-467. Distribution of Funds Appropriated for Library Books and Electronic Resources.****R277-467-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Electronic resources" means databases, CDs, DVDs, software or other items in electronic format which may be included in the school library media collection and made available for use or access in the school library media center.
- C. "Library books" means trade books that support the school curriculum and books for recreational reading interests. This definition does not include textbooks or books used solely for classroom instruction or classroom libraries.
- D. "USOE" means the Utah State Office of Education.

R277-467-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools 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 distribute an on-going appropriation, subject to budget constraints, to school districts and charter schools. The appropriation is designated for school library books and electronic resources.

R277-467-3. Distribution of Funds.

- A. Each Utah public and charter school shall receive an allocation from the annual appropriation as follows:
 - (1) 25 percent shall be divided equally among all public schools; and
 - (2) 75 percent shall be divided among public schools based on each school's average daily membership as compared to the total average daily membership of all public schools.
- B. A school district or charter school may not use money appropriated in this allocation to supplant other monies used to purchase library books or electronic resources.
- C. Schools shall spend these fund allocations only for library books and electronic resources that shall be part of the school library media collection and available for general use and checkout by students and staff or both.

R277-467-4. Accountability and Evaluation.

The USOE may review schools' use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.

KEY: libraries, educational media**August 7, 2007****Notice of Continuation June 15, 2012****Art X Sec 3****53A-1-401(3)**

R277. Education, Administration.**R277-483. Persistently Dangerous Schools.****R277-483-1. Definitions.**

A. "Adequate yearly progress" means a specific level of student achievement has been met by an individual school consistent with the requirements of the federal No Child Left Behind (NCLB) Act.

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

C. "Charged" means the accusation of a crime by a formal complaint, information, or indictment.

D. "Days" for purposes of this rule mean school days, unless otherwise specified.

E. "Expelled" for purposes of this rule means a denial of school services at the student's school of residence for at least 60 consecutive school days. Expulsion differs from suspension in that a suspension is a less drastic method of discipline and generally continues for a shorter period than expulsion. A student shall be expelled by the local school board consistent with Section 53A-11-903.

F. "Federal gun-free schools violation" means any violation involving a firearm as defined under U.S.C., Title 18, Section 921.

G. "Homebound/hospitalized services" means services provided by a school district to a student that include the following:

(1) a minimum of two instructional contact hours per week;

(2) documentation of that contact;

(3) justification of the services which may include specific injuries, surgery, illness, other disabilities, pregnancy, or a district determination that a student should receive home instruction and supervision for a designated period of time. The expected period of absence must be estimated.

H. "Parent" for purposes of this rule, means the custodial parent, court-appointed legal guardian, or district-appointed guardian.

I. "Persistently dangerous school" means a public K-12 school with any combination of grades and that meets the following criteria: The school has at least three percent of the student body, as determined by the October 1 count, that has been expelled, as defined by this rule, in each of three consecutive school years for:

(1) violent criminal offenses, as defined in this rule, that occurred on school property or at school sponsored activities; or

(2) federal gun free school violations.

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

K. "Victim" for purposes of this rule means the student who is the object of a violent criminal offense that occurs on the property of the school the student attends.

L. "Violent criminal offense" means actual or attempted criminal homicide under Section 76-5-201, rape under Section 76-5-402 through 76-5-402.3, aggravated sexual assault under 76-5-405, forceable sexual abuse under 76-5-404, aggravated sexual abuse of a child under 76-5-404.1, aggravated assault under 76-5-103 and robbery under 76-6-301. The offense shall be reported to law enforcement and charged as indicated to qualify for purposes of this rule. The list of violent criminal offenses identified in this definition shall be maintained by the USOE and be readily available to the U.S. Department of Education.

R277-483-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Title IX, Part E, Subpart 2, Section 9532, Unsafe School Choice Options, which requires a state receiving funds under this Act to establish and implement a statewide policy requiring that a

student attending a persistently dangerous public elementary or secondary school, or who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the school district, including a public charter school.

B. The purpose of this rule is to comply with federal law and to provide for student transfers, consistent with state law and local board policies, if students are residents of schools designated as persistently dangerous or victims of violent criminal offenses identified in R277-483-1L.

R277-483-3. Persistently Dangerous School Data Collection.

A. The USOE shall provide consistent definitions and forms for collection of data necessary to make designations under this rule.

B. The USOE shall use data to count violent criminal offenses, identified in R277-483-1L, collected annually in the Safe Schools Incident Report, received by the USOE by June 15 annually, and required by the Elementary and Secondary Education Act, Section 4122.

R277-483-4. Identification of Persistently Dangerous Schools.

A. A school that reports data showing three percent or more of its studentbody has been expelled for violent criminal offenses, as defined under R277-483-1H and federal gun-free schools violations, as defined under R277-483-1E, shall be required to provide data to the USOE for the previous two school years documenting the number and type of student expulsions. If the documentation shows that more than three percent of the school's studentbody for both years in question was expelled for offenses designated in R277-483-1E or R277-483-1H or both, the school shall be designated a persistently dangerous school for the upcoming school year under this rule.

B. Following review of data collected under R277-483-3 and application of the criteria of this rule, the USOE shall recommend to the Board a list of persistently dangerous schools no later than July 1 of each school year.

C. The Board shall review the list of recommended persistently dangerous schools. The board shall designate persistently dangerous schools at a regular open Board meeting in July or August of each year.

D. A school, working with the local board, shall be removed by the Board from the list on an annual basis if:

(1) the school provides evidence and information to the Board's satisfaction that proves that the school no longer meets the qualifying criteria of this rule and

(2) the school presents evidence to the Board of regular and consistent training of students, staff, and community about school safety, harassment, bullying, and problem solving.

R277-483-5. Parental Notification.

If a school is designated by the Board as persistently dangerous, parents of all students attending the school shall be notified by the local board of available transfer schools in a reasonable manner by no later than August 15 of the school year of designation.

R277-483-6. Students' Right to Transfer to and Continued Attendance.

A. Parents receiving notification of persistently dangerous school status may choose to transfer and shall indicate desire to transfer and school of preference to the local board within 30 calendar days of the date of the notification letter. Schools or local school boards shall provide by written policy a window of at least 30 school days for student transfers. Students shall be assigned to a non-dangerous school within 30 days of written parent request for transfer.

B. Parents of students moving into a persistently dangerous school community following the transfer window shall be notified immediately of the school's persistently dangerous status and shall have 30 calendar days following registration to request transfer from the local board and indicate school preference. The local board shall have 30 calendar days to assign a school. Parents shall make a decision within 10 days following notification to accept the school assignment as offered by the local board or have their children remain in the resident school.

C. The local board shall designate available transfer schools within the district. The local board shall develop criteria for transfer schools and shall not designate other persistently dangerous schools or schools that failed to make adequate yearly progress (Section 1111 of the NCLB Act 1116 NCLB) as transfer schools.

D. Students attending alternative schools that have been designated as persistently dangerous shall be offered choices consistent with district policies for alternative school placement. If a local board determines that the only appropriate placement for a student is an alternative school, the local board shall offer homebound/hospitalized services, under R277-419, or other home or non-school based programs as an option to the alternative school.

E. Students who have been disciplined for any of the violations identified in this rule forfeit the right to transfer from a persistently dangerous school.

F. Students shall be eligible to participate in all extracurricular activities immediately in their new schools of residence if they transfer consistent with this rule.

G. A student shall have a right to continued attendance at a school selected under this rule or a local board may require, by local board policy, a student to return to the student's resident school upon change of school safety designation, under R277-483-5.

R277-483-7. Student Victims of School Safety Offenses.

A. Students who are victims of a violent criminal offense, as defined in R277-483-1J, and their parent(s)/guardian(s), shall receive notice of available non-dangerous schools in the district as soon as reasonably possible after the school's or district's official notification of the incident by law enforcement.

B. The local board shall make available a school within 15 days of parental notification or arrange for homebound/hospitalized services, under R277-419, within 15 days of parental notification. The transfer shall not result in loss of credit or reduction in grade of the victimized student as long as the parent and student cooperate fully in the transfer process.

R277-483-8. Corrective Action.

A. The Board may assist local boards to develop corrective action plans for schools designated as persistently dangerous.

B. Corrective action plans shall include such training as improving communication among schools, parents, local law enforcement; training about harassment and bullying for both school personnel and students; activities that address and increase student social competency; improved student supervision; and consistent enforcement of school discipline plans.

C. Local boards shall provide annual assurance to the Board that corrective action plans have been implemented in all designated persistently dangerous schools.

R277-483-9. Complaint and Appeal Procedure.

A. A designated standing committee of the Board shall be the appeals committee for schools designated as persistently dangerous.

(1) The designated standing committee of the Board shall establish procedures for the appeal process.

(2) Annually, the USOE shall notify local boards of proposed designation of persistently dangerous schools prior to presenting the list to the Board.

(3) The designated standing committee of the Board shall provide an opportunity to the local board to appeal the proposed designation. The Board shall receive the designated standing committee's designations prior to a final decision by the Board. Local boards may only appeal based on evidence of incomplete or inaccurate data.

B. Parent appeal process of decisions made by local boards under this rule:

(1) A local board shall develop a procedure or use an existing appeals procedure to address appeals of decisions made under this rule.

(2) A parent shall attempt to resolve a complaint involving the application of this rule at the school level, where the parent shall receive, upon request, a copy of this rule and the local board's policy for handling parental complaints.

(3) If a parent is not satisfied, the parent shall attempt to resolve the complaint with the local board or its designee.

R277-483-10. Miscellaneous Provisions.

A. The Board shall maintain a record of the data collected and used to identify persistently dangerous schools and other appropriate records in order to demonstrate compliance with the law.

B. School districts have no responsibility for transportation of students under this rule.

**KEY: expelled, persistently dangerous schools, school choice
June 7, 2012 Art X Sec 3
Notice of Continuation March 3, 2008 53A-1-401(3)
Title IX, Part E, Subpart 2, Section 9532**

R277. Education, Administration.**R277-486. Professional Staff Cost Program.****R277-486-1. 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.

C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

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

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

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

H. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each LEA.

R277-486-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Section 53A-17a-107(2) which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, 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 satisfy statutory or federal regulatory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Section 53A-17a-107(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited by the USOE, for purposes of the professional staff cost calculation, with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

- (1) public school outside of the State of Utah;
- (2) private school; or
- (3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is or was employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and a school internship shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

- (1) regionally accredited institution of higher education;

or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-501 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Section 53A-17a-107(1)(a) shall be used:

- (1) 03 = Bachelor's Degree;
- (2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;
- (3) 06 = Master's Degree;
- (4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;
- (5) 09 = Doctorate.

B. An LEA shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3C.

B. For LEAs that were not in operation in the prior year, data shall be used from November 1 update of CACTUS as required by R277-484-3J.

KEY: professional staff

June 7, 2012

Notice of Continuation January 5, 2009

Art X Sec 3

53A-17a-107(3)

53A-1-401(3)

R277. Education, Administration.**R277-488. Critical Languages Program.****R277-488-1. Definitions.**

A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is a test, both written and verbal, offered at most Utah colleges and universities.

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

C. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain or Mexico. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.

D. "Critical language" means those languages described under Section 53A-15-104(1).

E. "Critical language program" means the enhanced EDNET program and the international teacher exchange program as defined and funded under Section 53A-15-104.

F. "Dual language immersion" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

G. Dual language immersion instructional models are:

(1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.

(2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.

H. "EDNET" means the state's two-way interactive system for video and audio, delivered and available to students in the state's public education system, as defined under Section 53A-15-104(2).

I. "Electronic High School" means the state's electronic high school program explained in Section 53A-17a-131.15 and R277-725.

J. "Foreign exchange student" means a student sponsored by an agency approved by the school district's local school board or charter school's governing board, subject to the limitations of Section 53A-2-206(2).

K. "Language facilitator" means a paraprofessional or licensed educator who is fluent in the critical language being taught by EDNET and who is designated to participate in the Critical Languages Program established under Section 53A-15-104.

L. "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

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

R277-488-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to establish, administer, and expand the Critical Languages Program and authorizes the creation of a Dual Language Immersion Pilot Program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing funds to secondary schools

participating in the Critical Languages Program and funds to elementary schools participating in the Dual Language Pilot Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah and to increase the number of biliterate and bilingual students.

R277-488-3. Critical Language Program Requirements.

A. A secondary school that desires to participate in the Critical Languages Program (enhanced EDNET, traditional instruction or visiting guest teacher program) shall submit an application, provided by the USOE and available each March 14 to the USOE no later than April 14.

B. The application shall designate:

(1) a specific available classroom within the school district or charter school for EDNET access, traditional instruction or instruction by identified credentialed visiting guest teacher teaching under a USOE/foreign country Memorandum of Understanding;

(2) a plan and procedure in place to notify students and parents of the availability of at least one critical language course identified in Section 53A-15-104(1);

(3) for schools using enhanced EDNET delivery, a qualified language facilitator hired and available to students who:

(a) is fluent in the critical language being taught;

(b) has established his fluency by receiving a score of intermediate high or higher on an ACTFL OPI test or USOE-approved equivalent;

(c) is qualified as a paraprofessional under R277-524; or

(d) is a Utah licensed educator; and

(e) has completed a criminal background check including review of identified offenses by the school district or charter school.

(4) requirements for the visiting guest teacher exchange program:

(a) programs shall operate under a Memorandum of Understanding;

(b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;

(c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.

C. Schools applying for either the enhanced EDNET, traditional instruction or the visiting guest teacher program shall provide identified materials, including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. Dual Language Immersion Pilot Program Requirements.

A. The program shall provide funding for a planning year in 2008-09 with classes to begin in 2009-10.

B. The program shall provide funds beginning July 1, 2008 as an incentive to 15 qualifying schools to develop dual language programs for the following languages:

(1) Chinese (6);

(2) Spanish (6);

(3) French (2);

(4) Navajo (1).

C. An elementary school that desires to participate in the Dual Language Immersion Pilot Program (either one-way or two-way) shall submit an application, provided by the USOE and available by April 14 to the USOE by May 14.

D. Schools/school districts may request funding for no more than two additional pilot sites.

E. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:

(1) an identified, instructional model (one-way or two-

way), and language choice (Chinese, Spanish, French, or Navajo);

(2) beginning the instructional model in kindergarten, grade 1 or both, and adding an additional grade each year; and

(3) a plan and procedure in place to notify students and parents of the availability of at least one dual language immersion course identified in Section 53A-15-104(1).

F. Priority in funding shall be given to schools in school districts or charter schools that do not currently teach the requested language choice; and

(a) demonstrate adequate local funding and infrastructure to begin a pilot program or expand existing programs;

(b) demonstrate community interest and students committed and prepared to participate in a new or expanded pilot program, including prepared instructors for the program;

(c) have adequate interest, resources, and infrastructure, but do not presently have a program under R277-488;

(d) have a demonstrated community need for improved or expanded foreign language instruction in a specific school or community; and

(e) allow pilot language programs to include all languages identified in Section 53A-15-105.

G. Schools shall hire qualified language teachers for students who:

(1) have a world language endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a one-way dual language immersion program or a bilingual endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a two-way dual language immersion program;

(2) are Utah licensed elementary educators; and

(3) have completed a criminal background check, including review of identified offenses by the USOE.

R277-488-5. USOE Responsibilities and Funds.

A. Applications for the expanded Critical Languages Program and Dual Immersion Pilot Program shall be provided by the USOE.

B. Secondary and elementary schools shall be selected for funding for both programs based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

C. Awards shall be made to individual secondary or elementary schools and funds allocated to school districts and charter schools to be fully distributed to designated schools.

D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school, designated in Section 53A-15-104(6)(a).

E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).

F. Each secondary school selected for funding shall receive a supplemental allocation designated in Section 53A-15-104(6)(b).

(1) School districts and charter schools approved for participation under this rule shall receive funds for students who complete a critical language course with a grade of C or better by June 15;

(2) Secondary schools shall receive additional funding for foreign exchange students enrolled in a high school who complete a critical language course, as designated in Section 53A-15-104(6)(c) and consistent with R277-612.

G. Based on available funds, secondary and elementary schools shall receive six years of ongoing funding.

H. Schools eligible for funding shall be notified by the USOE by June 1 annually.

R277-488-6. Evaluation and Reports.

A. Each secondary or elementary school selected for

funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104.

B. The USOE may request additional data from secondary or elementary schools that receive funding.

KEY: critical languages, dual language immersion

July 8, 2008

Notice of Continuation June 15, 2012

Art X Sec 3

53A-15-104

53A-1-401(3)

R277. Education, Administration.**R277-489. Optional Extended-Day Kindergarten - Responsibilities, Timelines, and Funding.****R277-489-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.
- C. "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.
- D. "Optional Extended Day Kindergarten" means a program that provides additional instruction to kindergarten age students as either an extension of the half day program or extended time before or after school, on Saturdays or during the summer.
- E. "Required instructional hours" means at least the same number of instructional hours, per school year, as first grade consistent with R277-419-1, Pupil Accounting.
- F. "USOE" means the Utah State Office of Education.

R277-489-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1a-902 which directs the Board to make rules establishing application and reporting procedures to administer the optional extended-day kindergarten program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to establish criteria and procedures for application and reporting procedures to administer the optional extended-day kindergarten program.

R277-489-3. School District Responsibilities.

- A. School districts intending to participate in the optional extended-day kindergarten program shall submit a letter of intent to the USOE by May 1, 2007 and by application every succeeding year.
- B. School districts shall submit applications available from the USOE by July 2, 2007 and by August 10 for each year thereafter providing:
 - (1) the school(s) within the district that will participate in the optional extended-day program;
 - (2) the approximate number of classes of optional extended-day kindergarten that will be offered at each school in the district;
 - (3) the approximate number of Title I schools identified by the school district, and which Title I schools will participate in the optional extended-day kindergarten program;
 - (4) the approximate number of students in the school district who were eligible to receive free school lunch under USDA regulations in the previous school year; and
 - (5) all other assurances, information and documentation required by the USOE on the application.

R277-489-4. Charter School Responsibilities.

- A. Charter schools shall be in, at least, their second year of successful operation to participate in the optional extended-day kindergarten program.
- B. Charter schools that intend to participate in the optional extended-day kindergarten program shall submit a letter of intent to the USOE by July 2, 2007 and by August 10 each year thereafter providing:
 - (1) that the school intends to participate in the optional extended-day kindergarten program;
 - (2) the approximate number of classes of optional extended-day kindergarten that will be offered at the school;
 - (3) if the charter school is designated as a Title I school;

(4) the approximate number of students in the school who were eligible to receive free school lunch under USDA regulations in the previous school year; and

(5) all other assurances, information and documentation required by the USOE on the application.

R277-489-5. Funding.

- A. Optional extended-day kindergarten program funds shall be distributed to charter schools and school districts consistent with Section 53A-1a-903(3) and (4) respectively.
- B. The Board shall modify the distribution of funds to provide sufficient funding for each Title I school, including neighborhood and charter schools, to participate in the optional extended-day kindergarten program.
- C. Funding modifications for Title I schools shall be made separately for school districts and charter schools.
- D. \$7,500,000 of the \$30,000,000 appropriated for the optional extended-day kindergarten program shall be distributed annually in 2007, 2008, 2009 and 2010 to participating school districts and charter schools, consistent with Section 53A-1a-903.

R277-489-6. Assessment, Accountability and Reporting.

- A. Both school districts and charter schools shall use a self-selected kindergarten readiness assessment with all kindergarten students.
 - (1) The days used for assessment shall be consistent with R277-419-7, Pupil Accounting.
 - (2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.
 - (3) Post assessments shall be completed by school districts and charter schools prior to the ending of the school year and reported to the Board.
 - (4) Post assessments results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessment used for program placement.
- B. The USOE shall require and school districts and charter schools shall provide annual reports to the USOE consistent with Section 53A-1a-902(4)(d).
- C. School districts and charter schools that fail to provide complete, accurate and timely reports shall not receive funding in subsequent years.

**KEY: kindergarten, extended-day
July 9, 2007
Notice of Continuation June 15, 2012**

**Art X Sec 3
53A-1a-902
53A-1-401(3)**

R277. Education, Administration.**R277-503. Licensing Routes.****R277-503-1. Definitions.**

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by an LEA in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements.

H. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

I. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

- (1) requirements established by law or rule;
- (2) three years of successful education experience within a five-year period; and
- (3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

K. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

L. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

M. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

N. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

O. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

- (1) Middle States Commission on Higher Education;
- (2) New England Association of Schools and Colleges;
- (3) North Central Association Commission on Accreditation and School Improvement;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; and
- (6) Western Association of Schools and colleges: Senior College Commission.

P. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings.

Q. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

R. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

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

R277-503-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall:

- (1) have completed an approved college/university teacher preparation program,
- (2) have been recommended for licensing, and
- (3) have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area shall submit passing score(s) on a rigorous Board-designated content test, where tests are

available, prior to the issuance of a renewable license or endorsement.

D. For each endorsement in an NCLB core academic area to be posted on the license, secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available.

E. An applicant shall submit electronic or original documentation of passing score(s) on a rigorous Board-designated content test to the USOE.

F. A licensure candidate that has completed a Utah university/college teacher preparation program prior to January 1, 2011 who submits a score below the final Utah state passing score on the test designated in R277-503-3C shall be issued a nonrenewable conditional Level 1 license. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's designated renewal date.

G. Any licensure candidate, except those described in R277-503-3F, recommended for a Utah Level 1 license who does not submit a passing score on the test designated in R277-503-3C shall not be eligible for licensure until achieving a passing score.

R277-503-4. Licensure Routes.

Applicants who seek Utah educator licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

- (1) Nationally accredited by:
 - (a) NCATE; or
 - (b) TEAC; and

(2) As of January 1, 2012, approved by USOE to recommend for licensure in the license area or endorsements or both in designated areas.

B. An applicant that meets the eligibility requirements in R277-503-3B and is assigned to teach exclusively in an online setting shall be eligible to begin the ARL program but upon completion of the ARL program shall earn a license area of concentration that is restricted to providing instruction in an online setting.

C. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on a Board-designated content test to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status, an ARL license applicant shall submit a score on a Board-designated content test, where available, to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s) and rigorous Board-designated content test score, the USOE ARL advisors

and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(i) The applicant has had at least three years of experience as an educator or paraeducator;

(ii) The applicant's experience has been successful based on documentation from the LEA; and

(iii) The USOE and employing LEA has approved the applicant's experience in lieu of pedagogy course(s).

(f) The employing LEA shall assign a trained mentor to work with the applicant for licensing by agreement.

(g) The LEA shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The LEA may request assistance from an institution of higher education or the USOE in the monitoring and assessment.

(h) The LEA shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The LEA may request assistance in this assessment; and

(i) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

(j) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) An LEA employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA who satisfies the minimum requirements of R277-503-3.

(b) An employing LEA, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing LEA shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The LEA shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The LEA shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the LEA and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete and satisfactory, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4C(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of

progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

D. LEA specific competency-based licenses:

(1) An LEA may apply to the Board for a Level 1 competency-based license to fill a position in the LEA. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, or results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the Level 1 competency-based license from the LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) The written copy of the Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9) An LEA may change the assignment of a competency-based license holder; notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license despite the limitations of R277-504-3D.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, the application shall be subject to additional USOE review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting LEA. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist. The USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah LEA-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE.

(a) The university or LEA shall be responsible for final review and recommendation.

(b) The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and USOE authorization.

R277-503-6. Additional Provisions.

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE and TEAC.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

KEY: teachers, alternative licensing

June 7, 2012

Notice of Continuation March 15, 2012

Art X Sec 3

53A-1-402(1)(a)

53A-1-401(3)

R277. Education, Administration.**R277-520. Appropriate Licensing and Assignment of Teachers.****R277-520-1. Definitions.**

A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

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

C. "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.

D. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

E. "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

F. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

G. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

H. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-6.

I. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

J. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.

K. "LEA" means a school district or charter school.

L. "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-11.

M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level

1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate in education or in a field related to a content area under R277-501-1M from an accredited institution.

P. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

Q. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

R. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

S. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

T. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

U. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

V. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

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

R277-520-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Required Licensing.

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure

to ensure that an educator has appropriate licensure consistent with timelines provided in R277-501 may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed.

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. An elementary content specialist in Fine Arts or Physical Education shall hold a Level 1, 2, or 3 license with an elementary license area of concentration or a secondary license area of concentration with the appropriate K-12 subject/content endorsement.

D. An elementary content specialist in reading or English as a Second Language shall hold a Level 1, 2, or 3 license with an elementary license area of concentration with the appropriate subject/content endorsement or a secondary license area of concentration with the appropriate subject/content endorsement. Placing a content specialist in a setting out of the specialist's license area of concentration shall be based on exceptional circumstances and in consultation with the USOE.

E. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

F. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

G. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

H. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-11 (SAEP).

I. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.

R277-520-5. Routes to Utah Educator Licensing.

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.

B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-9.

R277-520-6. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1G, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load except as provided in R277-520-6C.

C. In identified circumstances, teachers with an eminence authorization may teach more than 37 percent of the regular instructional load. An eminence authorization may be approved by the Board if:

(1) the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

- (i) description;
- (ii) recruitment efforts;
- (iii) the qualifications of all applicants; and
- (iv) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

(2) An individual has exceptional skills, expertise, and experience that make him the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

- (i) information about the position;
- (ii) the individual's expertise, and experience; and
- (iii) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.

D. LEAs shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the LEA.

E. The LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. An LEA that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-7. State Qualified Teachers.

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement

for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-11 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

R277-520-8. Highly Qualified Teachers.

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

R277-520-9. School District/Charter School Specific Competency-based Licensed Teachers.

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.

(2) The employing school district shall request a school district/charter school specific competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific competency-based license for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific competency-based license for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a school district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The school district/charter school specific competency-based license for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the school

district/charter school specific competency-based license and for the individual originally employed under the school district/charter school specific competency-based license.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. A school district/charter school may change the assignment of a school district/charter school-specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-520-10. Routes to Appropriate Endorsements for Teachers.

Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:

A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. individuals shall be properly endorsed consistent with R277-520-4 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

R277-520-11. Board-Approved Endorsement Program (SAEP).

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement and who have at least nine hours of USOE-approved university level courses shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

R277-520-12. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly

qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

KEY: educators, licenses, assignments

June 7, 2012

Notice of Continuation July 1, 2010

**Art X Sec 3
53A-1-401(3)
53A-6-104(2)(a)**

R277. Education, Administration.**R277-700. The Elementary and Secondary School Core Curriculum.****R277-700-1. Definitions.**

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Accreditation Commission or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

B. "Applied courses" means public school courses or classes that apply the concepts of Core subjects. Courses may be offered through Career and Technical Education or other areas of the curriculum.

C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.

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

E. "Career and Technical Education(CTE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

F. "Core Standard" means a statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

G. "Core subjects" means courses for which there is a declared set of Core Standards as approved by the Board.

H. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

I. "Demonstrated competence" means subject mastery as determined by LEA standards and review. Review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

J. "Elementary school" for purposes of this rule means grades K-6 in whatever kind of school the grade levels exist.

K. "High school" for purposes of this rule means grades 9-12 in whatever kind of school the grade levels exist.

L. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

N. "Life Skills document" means a companion document to the Core curriculum that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

O. "Middle school" for purposes of this rule means grades 7-8 in whatever kind of school the grade levels exist.

P. "SEOP" means student education occupation plan. An SEOP shall include:

- (1) a student's education occupation plans (grades 7-12) including job placement when appropriate;
- (2) all Board and LEA board graduation requirements;
- (3) evidence of parent, student, and school representative involvement annually;
- (4) attainment of approved workplace skill competencies; and
- (5) identification of post secondary goals and approved sequence of courses.

Q. "State Core Curriculum (Core Curriculum)" means the courses, content, instructional elements, materials, resources and

pedagogy that are used to teach the Core Standards, as well as the ideas, knowledge, practice and skills that support the Core Standards.

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

R277-700-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Section 53A-1-402.6 which directs the Board to establish a Core Curriculum in consultation with LEA boards and superintendents and directs LEA boards to design local programs to help students master the Core Curriculum; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the minimum Core Curriculum and Core Standard requirements for the public schools, to give directions to LEAs about providing the Core Curriculum and Core Standards for the benefit of students, and to establish responsibility for mastery of Core Standard requirements.

R277-700-3. Core Curriculum and Core Standards.

A. The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as part of the Core Curriculum.

B. Course descriptions for required and elective courses shall be developed cooperatively by LEAs and the USOE with opportunity for public and parental participation in the development process.

C. The descriptions shall contain mastery criteria for the courses, shall stress mastery of the course material and Core Standards and life skills consistent with the Core Curriculum and Life Skills document. Mastery shall be stressed rather than completion of predetermined time allotments for courses.

D. Implementation of the Core Curriculum and student assessment procedures are the responsibility of LEA boards consistent with state law.

R277-700-4. Elementary Education Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for elementary schools, grades K-6.

B. Elementary School Education Core Subject Area Requirements:

- (1) Grades K-2:
 - (a) Reading/Language Arts;
 - (b) Mathematics;
 - (c) Integrated Curriculum.
- (2) Grades 3-6:
 - (a) Reading/Language Arts;
 - (b) Mathematics;
 - (c) Science;
 - (d) Social Studies;
 - (e) Arts:
 - (i) Visual Arts;
 - (ii) Music;
 - (iii) Dance;
 - (iv) Theatre.
 - (f) Health Education;
 - (g) Physical Education;
 - (h) Educational Technology;
 - (i) Library Media.

C. It is the responsibility of LEA boards to provide access to the Core Curriculum to all students.

D. Student mastery of the Core Standards is the responsibility of LEA boards.

E. Informal assessment should occur on a regular basis to ensure continual student progress.

F. Board-approved CRTs shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics;
- (4) science; and
- (5) effectiveness of written expression in grades five and eight.

G. Provision for remediation for all elementary students who do not achieve mastery is the responsibility of LEA boards.

R277-700-5. Middle School Education Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for middle school education.

B. Students in grades 7-8 shall earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.

C. LEA boards may require additional units of credit.

D. Grades 7-8 Core Curriculum Requirements and units of credit:

- (1) Language Arts (2.0 units of credit);
- (2) Mathematics (2.0 units of credit);
- (3) Science (1.5 units of credit);
- (4) Social Studies (1.5 units of credit);
- (5) The Arts (1.0 units of credit):
 - (a) Visual Arts;
 - (b) Music;
 - (c) Dance;
 - (d) Theatre.
- (6) Physical Education (1.0 units of credit);
- (7) Health Education (0.5 units of credit);
- (8) Career and Technical Education, Life, and Careers (1.0 units of credit).

E. Best practices, technology and other instructional media shall be used in middle school curricula to increase the relevance and quality of instruction.

F. Board-approved CRTs shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics; and
- (4) science in grades 7 and 8.

R277-700-6. High School Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for students in grades 9-12.

B. Students in grades 9-12 shall earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

C. Grades 9-12 Core Curriculum credits from courses approved by the Board, as specified:

- (1) Language Arts (4.0 units of credit):
 - (a) Ninth grade level (1.0 unit of credit);
 - (b) Tenth grade level (1.0 unit of credit);
 - (c) Eleventh grade level (1.0 unit of credit); and
 - (d) Twelfth grade level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts; and

(iii) courses apply the fundamental concepts and skills of language arts; and

(iv) courses provide developmentally appropriate content;

and

(v) courses develop skills in reading, writing, listening, speaking, and presentation;

(2) Mathematics (3.0 units of credit) met minimally through successful completion of a combination of the foundation or foundation honors courses, Algebra 1, Geometry, Algebra 2, Secondary Mathematics I, Secondary Mathematics II, Secondary Mathematics III as determined in the student's SEOP. After the 2014-2015 school year Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation honors courses Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(a) Students may opt out of Algebra 2 or Secondary Mathematics III with written parent/legal guardian request. If an opt out is requested, the third math credit shall come from the advanced and applied courses on the Board-approved mathematics list.

(b) 7th and 8th grade students may earn credit for a mathematics foundation course before ninth grade, consistent with the student's SEOP and if at least one of the following criteria is met:

(i) the student is identified as gifted in mathematics on at least two different USOE-approved assessments;

(ii) the student is dual enrolled at the middle school/junior high school and the high school;

(iii) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade;

(iv) the student takes the USOE competency test in the summer prior to 9th grade and earns high school graduation credit for the courses.

(c) Other students who successfully complete a foundation course before ninth grade shall still earn 3.0 units of credit by taking the other foundation courses and an additional course from the advanced and applied Board-approved mathematics list consistent with the student's SEOP and the following criteria:

(i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

(ii) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

(iii) courses apply the fundamental concepts and skills of mathematics;

(iv) courses provide developmentally appropriate content; and

(v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(c) Students who are gifted and students who are advanced may also:

(i) Take the honors courses at the appropriate grade level; and

(ii) Continue taking higher level mathematics courses in sequence through grade 11, resulting in a higher level of mathematics proficiency and increased college and career readiness.

(d) A student who successfully completes a Calculus course has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(e) Students should consider taking additional credits during their senior year that align with their postsecondary career or college expectations. Students who desire a four year college degree in a science, technology, engineering or mathematics (STEM) career area should take a calculus course.

(3) Science (3.0 units of credit):

(a) at a minimum, two courses from the four science foundation areas:

(i) Earth Systems Science (1.0 units of credit);

(ii) Biological Science (1.0 units of credit);

- (iii) Chemistry (1.0 units of credit);
- (iv) Physics (1.0 units of credit); and
- (b) one additional unit of credit from the foundation courses or the applied or advanced science list determined by the LEA board and approved by the Board using the following criteria and consistent with the student's SEOP:
 - (i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills; and
 - (ii) courses provide instruction that leads to student understanding of the nature and disposition of science; and
 - (iii) courses apply the fundamental concepts and skills of science; and
 - (iv) courses provide developmentally appropriate content; and
 - (v) courses include the areas of physical, natural, or applied sciences; and
 - (vi) courses develop students' skills in scientific inquiry.
- (4) Social Studies (3.0 units of credit):
 - (a) Geography for Life (0.5 units of credit);
 - (b) World Civilizations (0.5 units of credit);
 - (c) U.S. History (1.0 units of credit);
 - (d) U.S. Government and Citizenship (0.5 units of credit);
 - (e) General Financial Literacy (0.5 units of credit).
- (5) The Arts (1.5 units of credit from any of the following performance areas):
 - (a) Visual Arts;
 - (b) Music;
 - (c) Dance;
 - (d) Theatre;
 - (6) Physical and Health Education (2.0 units of credit):
 - (a) Health (0.5 units of credit);
 - (b) Participation Skills (0.5 units of credit);
 - (c) Fitness for Life (0.5 units of credit);
 - (d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).
 - (7) Career and Technical Education (1.0 units of credit):
 - (a) Agriculture;
 - (b) Business;
 - (c) Family and Consumer Sciences;
 - (d) Health Science and Technology;
 - (e) Information Technology;
 - (f) Marketing;
 - (g) Technology and Engineering Education;
 - (h) Trade and Technical Education.
 - (8) Educational Technology (0.5 units of credit):
 - (a) Computer Technology (0.5 units of credit for the class by this specific name only); or
 - (b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the LEA).
 - (9) Library Media Skills (integrated into the subject areas).
 - (10) Electives (6.0 units of credit).
- D. Board-approved CRTs shall be used to assess student mastery of the following subjects:
 - (1) reading;
 - (2) language arts through grade 11;
 - (3) mathematics as defined under R277-700-6C(2); and
 - (4) science as defined under R277-700-6C(3).
- E. LEA boards may require students to earn credits for graduation that exceed minimum Board requirements.
- F. Additional elective course offerings may be established and offered at the discretion of an LEA board.
- G. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications and substitutions or exemptions made to

accommodate a student with disabilities.

H. The Board and USOE may review LEA boards' lists of approved courses for compliance with this rule.

I. Graduation requirements may be modified for individual students to achieve an appropriate route to student success when such modifications:

- (1) are consistent with the student's IEP or SEOP or both;
- (2) are maintained in the student's file and include the parent's/guardian's signature; and
- (3) maintain the integrity and rigor expected for high school graduation, as determined by the Board.

R277-700-7. Student Mastery and Assessment of Core Standards.

A. Student mastery of the Core Curriculum at all levels is the responsibility of LEA boards of education.

B. Provisions for remediation of secondary students who do not achieve mastery is the responsibility of LEA boards of education under Section 53A-13-104.

C. Students who are found to be deficient in basic skills through U-PASS shall receive remedial assistance according to provisions of Section 53A-1-606(1).

D. If parents object to portions of courses or courses in their entirety under provisions of law (Section 53A-13-101.2) and rule (R277-105), students and parents shall be responsible for the mastery of Core objectives to the satisfaction of the school prior to promotion to the next course or grade level.

E. Students with disabilities:

(1) All students with disabilities served by special education programs shall demonstrate mastery of the Core Standards.

(2) If a student's disabling condition precludes the successful demonstration of mastery, the student's IEP team, on a case-by-case basis, may provide accommodations for or modify the mastery demonstration to accommodate the student's disability.

F. Students may demonstrate competency to satisfy course requirements consistent with R277-705-3.

G. All Utah public school students shall participate in state-mandated assessments, as specified in R277-404.

H. LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-473.

KEY: curricula

June 7, 2012

Notice of Continuation January 8, 2008

**Art X Sec 3
53A-1-402(1)(b)
53A-1-402.6
53A-1-401(3)**

R277. Education, Administration.**R277-733. Adult Education Programs.****R277-733-1. Definitions.**

- A. "Adult" means an individual 18 years of age or over.
- B. "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs, provided by LEAs or nonprofit organizations affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah who are out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school, to improve their literacy levels and to further their high school level education.
- C. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:
- (1) increasing their independence;
 - (2) improving their ability to benefit from occupational training;
 - (3) increasing opportunities for more productive and profitable employment; and
 - (4) making them better able to meet adult responsibilities.
- D. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.
- E. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.
- F. "Board" means the Utah State Board of Education.
- G. "Community-Based Organization (CBO)" means a nonprofit organization:
- (1) eligible for and accepting federal AEFLA funds; and
 - (2) for the sole purpose of providing adult education services to qualified adult education learners.
- (3) All rules and laws that apply to LEAs shall also apply to CBOs that receive adult education funding.
- (4) CBOs:
 - (a) apply to the USOE;
 - (b) receive adult education funding through a competitive process; and
 - (c) receive USOE funding on a reimbursement basis only.
- H. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.
- I. "Desk monitoring" means the review of UTopia data to ensure program integrity.
- J. "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:
- (1) is 17 years of age or older, and whose high school class has graduated; or
 - (2) is under 18 years of age and is married; or
 - (3) has been adjudicated as an adult; or
 - (4) is an out-of-school youth 16 years of age or older who has not graduated from high school.
- K. "Enrollee" means an adult student who has 12 or more contact hours in an adult education program during a fiscal/program year, an academic assessment establishing an

Entering Functioning Level, has an adult education Student Education Occupation Plan (SEOP) with an established goal, and a defined funding code. Enrollee status is based on the last date that all of the above items are entered into UTopia.

L. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

M. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program. All fees are subject to approval by the local school board of education or local board of trustees.

N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests.

O. "General Educational Development (GED) Testing" means the test required under R277-702.

P. "LEA" means a local education agency, including local school boards and public school districts.

Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-10.

R. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.

S. "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and is counted in the regular school program who receives instruction in both a traditional and adult education program. The funds generated, weighted pupil unit (WPU) and collected fees, are pro-rated and credited to the adult education program for attendance in an adult education program.

T. "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

U. "Participant" means an adult education student who does not meet the qualifications of an adult education enrollee.

V. "Student education/occupation plan" or "SEOP," for purposes of adult education and this rule, means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

- (1) is initiated at the entrance into an adult education program;
- (2) identifies a student's skills and objectives;
- (3) maps out a strategy to guide a student's course selection; and
- (4) links a student to post-secondary options, including higher education and careers through a transition process defined by the adult education program.

W. "Teachers of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

X. "Tuition" means the base cost of an adult education program that provides services to adult education students.

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

Z. "Utah High School Completion Diploma" is a diploma issued by the Board and distributed by the GED Testing Centers as agents of the Board to an individual who passes all five subject areas of the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

AA. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

BB. "Waiver release form" means a form signed by an

adult education student allowing for release of the student's personal data and student education occupation plan, including social security number and GED scores, for data matching purposes with agencies such as the Department of Workforce Services, higher education, Utah State Office of Rehabilitation and GED Scoring Services. Signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training or career planning, or other purposes.

R277-733-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, Section 53A-15-401 which places the general control and supervision of adult education under the Board, Section 53A-1-402(1) which allows the Board to adopt minimum standards for programs and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities. Additionally, the Board and Board of Regents are directed to provide adult education programs to inmates under Section 53A-1-403.5.

B. The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-3. Federal Adult Education.

The Board adopts the Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act (WIA), Public Law 105-220, 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as the standards and procedures governing both federal and state funding of adult education programs, administered by the USOE.

R277-733-4. Program Standards.

A. Adult education programs shall comply with state and federal requirements and Board rules and follow procedures as defined in the Utah Adult Education Policy and Procedures Guide published, updated, and available from the USOE.

B. Adult education programs shall make reasonable efforts to market and inform prospective students within their geographic areas of the availability of the programs and provide enrollment information.

C. Utah adult education services may be offered to qualifying individuals whose primary residence is located in communities closely bordering Utah not conducive to commuting to the bordering state's closest adult education program. These individuals shall not be charged out-of-state Adult Education tuition.

D. Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.

E. Each eligible adult education student shall have a written Student Education Occupation Plan (SEOP) defining the student's goal(s) based upon a complete academic assessment, prior academic achievement, work experience and an established Entering Functioning Level. Annually, the plan shall be reviewed by the student and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

F. Only courses identified in R277-733-8 shall be taught by adult education staff.

G. Adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility

to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

H. The USOE shall evaluate programs through tri-annual site monitoring visits, monthly desk monitoring, and as needed, additional site visits or both, to assure compliance.

I. Education staff, including program administrators, shall be qualified and appropriate for their assignments.

J. The teaching certificate and endorsement held by a staff member of an LEA or community-based program shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For instance, elementary teachers may teach adult students who are performing academically at an elementary level in certain subjects. Individuals teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, ABE, GED Test preparation or AHSC classes shall instruct under the supervision of a licensed program employee.

K. Individuals with post-secondary degrees not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an Alternative Route to License as defined in R277-518, Career and Technical Education Licenses.

L. An individual who has TESOL or ESOL credentials in lieu of a Utah teaching license may be considered for employment solely in an adult education community-based program funded to provide ESL services.

R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the LEA is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

(2) Ten percent or \$50,000, whichever is less, of state adult education funds allocated to LEA adult education programs not expended in the current fiscal year may be carried over and spent in the next fiscal year with written approval by the USOE.

(3) A request to carry over funds shall be submitted for approval by August 1 annually. Approved carryover amounts shall be detailed in a revised budget submitted to the adult education coordinator no later than October 1 in the year requested.

(4) Excess funds may be considered in determining the LEA's allocation for the next fiscal year.

(5) Annually, fund balances in excess of 10 percent or \$50,000 shall be recaptured by the USOE no later than February 1 and reallocated to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education funded programs. The Utah Adult Education Policy and Procedures Guide (updated annually) including forms, procedures and guidelines is available on the USOE adult

education website.

R277-733-6. Adult Education Program Student Eligibility.

A. An individual is eligible to be a Utah adult education student if

- (1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or
- (2) a prospective adult education student who is otherwise eligible provides proof of Utah residency as defined in adult education policy.

B. The following does not establish residency for purposes of adult education programs:

- (1) mail addressed to occupant or resident;
- (2) letters from friends or relatives;
- (3) power of attorney documents;
- (4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

- (1) an individual 17 years of age or older whose high school class/cohort has graduated; or
- (2) an individual emancipated under Section 78-3a-1005; or
- (3) an individual emancipated by marriage; or
- (4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or
- (5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.

R277-733-7. Adult Education Pupil Accounting.

A. An LEA administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil (with part-time enrollment pro-rated by the LEA) for a student who is a resident of a Utah school district who meets the following criteria:

- (1) is at least 16 years of age but less than 19 years of age;
- (2) who has not received a high school diploma or a Utah High School Completion Diploma;
- (3) who intends to graduate from a K-12 high school; and
- (4) who attends an SEOP meeting with his school counselor, school administrator/designee, parent/legal guardian to discuss the appropriateness of the student's participation in adult education; or
- (5) A student 17 years of age or older, without a high school diploma but whose high school class has graduated, who is a Utah resident, and who intends to graduate from a K-12 high school, may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency. Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

B. The clock hours of students enrolled part-time shall be prorated.

C. As an alternative, equivalent WPUs may be generated for competencies mastered on the basis of prior authorization of a school district plan by the USOE.

D. For purposes of funding in an adult education program, a student can only be a pupil in average daily membership once on any day. If the student's day is part-time in the regular school program and part-time in the adult education program, the student's membership shall be reported on a prorated basis for each program. A student may not be funded for more than one

regular WPU for any school year.

E. An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency, enroll in an adult education program:

(1) The WPU shall not be generated by the student's participation in an adult education program.

(2) This student shall be eligible for adult education state funding.

(3) This student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision including the following:

(a) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program; or

(b) The student may earn a Utah High School Completion Diploma upon successful passing of all five GED Tests; or

(c) The student may, at the discretion of the LEA, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program; and

(ii) has not completed the requirements necessary for an Adult Education Secondary Diploma; or

(iii) has not successfully passed all five GED Tests and has not received a Utah High School Completion Diploma.

(4) An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to return to a K-12 high school.

(5) An out-of-school youth of school age who has received a Utah High School Completion Diploma is not eligible to return to a K-12 high school unless it is required for the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33.

(6) An out-of-school youth of school age who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation (AYP) outcomes.

(7) An out-of-school youth of school age may be considered eligible to take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

A. The Utah Adult Education Program shall offer courses consistent with the Utah Core curriculum under R277-700.

B. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of the adult education student.

C. Written course descriptions for AHSC required and elective courses shall be developed by LEA adult education programs for all classes taught, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

D. Written course descriptions for GED Test preparation, ESOL and ABE courses shall be developed cooperatively by LEAs, CBOs and the USOE based on Utah Core curriculum standards, modified for adult learners.

E. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.

F. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

G. Adult high school completion education is determined by the following prerequisite courses:

- (1) ESOL competency AEFLA levels one through six;
- (2) ABE competency AEFLA levels one through four.

H. AHSC courses for students seeking an Adult Education Secondary Diploma should meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits under the direction of a Utah licensed teacher as provided below:

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or LEA-approved competency examination in correlation with the student's SEOP career focus as defined in the following instructional areas:

- (i) Language Arts: 4.0;
- (ii) mathematics: 3.0 individualized mathematics courses to meet the life needs of adult learners;
- (iii) science: 3.0 from the four science foundations of chemistry, biological science, earth science, or physics;
- (iv) social studies: 3.0 including 1.0 in United States history, .50 in United States government and citizenship, .50 in geography, .50 in world civilizations, and .50 general financial literacy;

(v) arts: 1.50;

(vi) healthy lifestyles: 2.0 individualized courses meeting the life needs of adult learners that include: .25 to 1.50 health education, .25 to 1.50 individualized fitness for life courses;

(vii) career and technical education (CTE): 1.00;

(viii) information technology: .50 computer technology courses or successful completion of school district-approved competency examination; and

(ix) electives: 6.0 units of credit.

(b) approved adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill;

(d) basic or advanced military training;

(e) apprenticeship, union or registered work credentials;

(f) successful passing score on all five GED Tests; academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transcribed by June 30, 2009;

(f) transcribed college or university courses as they align to the Core instructional areas.

I. The USOE Adult Education Section and LEA programs shall disseminate clear information regarding revised adult education graduation requirements.

J. Adult education students receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency or a Utah High School Completion Diploma with a successful passing score on all five of the GED Tests consistent with students' SEOP career focus.

K. Adult Education Secondary Diploma graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) from age 16 until their 22nd birthday or an adult education SEOP, or both to meet unique educational needs.

L. A student's IEP or adult education SEOP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disability(ies).

M. Modified graduation requirements for an individual

student shall:

- (1) be consistent with the student's IEP or SEOP, or both;
- (2) be maintained in the student's files;
- (3) maintain the integrity and rigor expected for AHSC graduation.

N. LEAs shall establish policies allowing or disallowing adult education students participation in graduation activities or ceremonies.

O. An adult education student may only receive an Adult Education Secondary Diploma earned through a designated Northwest accredited Utah adult education program, as approved by the Board.

P. Adult education programs shall accept credits and grades awarded to students without alteration from other state-recognized adult education programs, schools accredited by Northwest or schools or programs approved by the Board.

Q. Adult education programs may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

R. An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

S. Adult education programs shall provide instruction that allows students to transition between sites in a seamless manner.

T. An adult education student seeking a Utah High School Completion Diploma shall be offered a course of academic instruction designed to prepare the student to take the GED Tests.

U. A Utah High School Completion Diploma shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator. Receipt of the Utah High School Completion Diploma does not end entitlement to a free appropriate public education for a student eligible for special education under IDEA.

V. Upon completion of requirements for a Utah Adult Education Secondary Diploma, or a Utah High School Completion Diploma, adult education students may only continue in an adult education program to improve their basic literacy skills if:

(1) their academic skills are less than 12.9 grade level in an academic area of reading, math or English; and

(2) they lack sufficient mastery of basic educational skills to enable them to function effectively in society. The focus of instruction shall be solely literacy and is limited specifically to reading, math or English.

R277-733-9. Adult Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class consistent with Section 53A-15-404.

B. Tuition and fees may be charged for ABE, GED preparation, AHSC, or ESOL courses in an amount not to exceed \$100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines, under the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq. The appropriate student fees and tuition shall be determined by the local school board or CBO board of trustees.

C. Adults who are or may attend adult education programs shall be given adequate notice of program tuition and fees through public posting. Any charged tuition or fees shall be set and reviewed annually by the local school board or CBO board of trustees.

D. Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.

E. Tuition may be charged for courses that satisfy

requirements outlined in R277-733-8B, when adequate state or local funds are not available.

F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B.

G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards of trustees.

H. Collected fees and tuition shall be used specifically to provide additional adult education and literacy services that the program would otherwise be unable to provide.

I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:

(1) returned/delegated with the exception of indirect costs to the local adult education program;

(2) used solely and specifically for adult education programming;

(3) not withheld and maintained in a general maintenance and operation fund.

J. All collected fees and tuition generated from the previous fiscal year shall be spent in the adult education program in the ensuing program year and shall not be used by an LEA in calculating carryover fund balance amounts.

K. Collected fees and tuition may not be counted toward meeting federal matching, cost sharing or maintenance of effort requirements related to the program's award.

L. Annually, local programs shall report to the school district or community-based organization and the USOE all fees and tuition collected from students associated with each funding source.

M. Fees and tuition collected from adult education students shall not be commingled or reported with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to LEAs offering adult education programs consistent with percentages defined in adult education policy in the following areas:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget.

B. Enrollee status students (not participants).

C. Contact hours (instructional and non-instructional) for both enrollee status students and participants.

D. Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.

E. Enrollee level gains.

F. Enrollee adult education earned secondary credits.

G. Supplemental support, to be distributed to:

(1) LEA adult education programs receiving less than one percent of the state allocation as indicated on the state allocation table that do not have any carryover funds. Applications for supplemental funds are accepted and processed annually between October 15 and October 31. Awarded funds shall be used for special program needs or professional development, as determined by written request and USOE evaluation of need and approval.

(2) Any balance of supplemental funds may be applied for by all remaining eligible LEAs who may or may not have carryover funds for special program needs or professional development, as determined by written request and USOE evaluation of need and approval between November 1 and March 1 annually.

(3) LEA recaptured funds that are greater than allowable carryover amounts shall be added to the available supplemental

funds and awarded to adult education programs based on the criteria defined in R277-733-10G(1) and (2).

H. Adult education federal AEFLA funds shall be distributed based on a competitive application. Second or subsequent year AEFLA funding shall be based on performance criteria established by the USOE, defined in adult education policy.

I. Funds, state or federal or both, may be withheld or terminated for noncompliance with:

(1) Board rule;

(2) adult education state policy and procedures or both;

(3) associated reporting timelines; and

(4) program monitoring outcomes, as defined by the USOE.

R277-733-11. Adult Education Records and Audits.

A. Official records shall be maintained in perpetuity:

(1) To validate student outcomes, programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:

(a) documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity;

(b) documentation of such proof shall be entered in the student's UTopia data record;

(2) copies of:

(a) transcribed grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials;

(b) completed Core followup surveys;

(c) releases of information requesting student record information and releases of student information to other requesting agencies;

(d) special education IEPs for students under the age of 22; and

(e) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.

B. To validate student outcomes annually, the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

(1) signed or refusal to sign waiver or release forms;

(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and

(3) contact hours (both noninstructional and instructional) documentation.

C. Audits:

(1) To ensure valid and accurate student data, all programs accepting either state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

(2) Annually, an independent auditor shall be retained by each LEA and CBO to audit student accounting records to verify UTopia data entries in addition to validating the cash controls over collections of student fees.

(3) Reports of accuracy shall be completed and submitted to the LEAs boards, the CBOs' boards of trustees, and as appropriate, the local adult education program director, and the USOE.

(4) The USOE shall receive the final auditor report from each adult education program by September 15 annually.

(5) A program shall prepare and submit to the USOE written corrective action plan for each audit finding by October 15 annually.

(6) USOE adult education staff members are responsible to monitor and assist programs in the resolution of corrective action plans.

(7) A program's failure to resolve audit findings may result in the termination of state and federal funding, or both.

(8) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs by the USOE in cooperation with the State Auditor's Office and published under the heading of APPC-5.

(9) USOE Adult Education program staff shall conduct tri-annual program reviews of each adult education program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed with program directors throughout the program year. Additional informal monitoring or reviews or site visits may be conducted as necessary.

(10) Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

(11) A program's failure to resolve audit findings may result in the termination of state or federal funding or both as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program Funds.

(13) The USOE shall review for cause school district or CBO records and practices for compliance with the law and this rule.

R277-733-12. Advisory Council.

A. The State Superintendent of Public Instruction or designee shall represent Adult Education programs on the Department of Workforce Services State Council as a voting member.

B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting at a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the USOE for oversight, monitoring, and evaluation of adult education programs and their compliance with law and this rule.

KEY: adult education

June 7, 2012

Notice of Continuation October 5, 2007

Art X Sec 3

53A-15-401

53A-1-402(1)

53A-1-401(3)

53A-1-403.5

53A-17a-119

53A-15-404

R307. Environmental Quality, Air Quality.**R307-105. General Requirements: Emergency Controls.****R307-105-1. Air Pollution Emergency Episodes.**

(1) Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE
AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE	800	1,600	2,100	2,620
24-hour average	(0.3 ppm)	(0.6 ppm)	(0.8 ppm)	(1.0 ppm)
PM10	350	420	500	600
24-hour average				
CARBON MONOXIDE				
8-hour average	17,000	34,000	46,000	57,500
	(15 ppm)	(30 ppm)	(40 ppm)	(50 ppm)
4-hour average				86,300
				(75 ppm)
1-hour average				144,000
				(125 ppm)
OZONE				
1-hour average	400	800	1,000	
	(0.2 ppm)	(0.4 ppm)	(0.5 ppm)	
2-hour average				1,200
				(0.6 ppm)
NITROGEN DIOXIDE	1130	2,260	3,000	3,750
1-hour average	(0.6 ppm)	(1.2 ppm)	(1.6 ppm)	(2.0 ppm)
NITROGEN DIOXIDE	282	565	750	938
24-hour average	(0.15 ppm)	(0.3 ppm)	(0.4 ppm)	(0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

(2) The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

R307-105-2. Emergency Actions.

(1) If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

(a) Make public announcements pertaining to the existence, extent and area of the episode.

(b) Require corrective measures as necessary to prevent a further deterioration of air quality.

(2) Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological

forecasts determine the crisis is over.

KEY: air pollution, emergency powers, governor*, air pollution

September 15, 1998

Notice of Continuation June 6, 2012

19-2-112

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2011, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2011, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
- (18) 40 CFR Part 63, Subpart CC, National Emission

Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission

Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions

Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PTTTT, National Emission

Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(98) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(99) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(100) 40 CFR Part 63 Subpart BBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(101) 40 CFR Part 63 Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(102) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(103) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(104) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(106) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(107) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(108) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(109) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(110) 40 CFR Part 63, Subpart OOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(111) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(112) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(113) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(114) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart VVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(117) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(118) 40 CFR Part 63, Subpart XXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(119) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(120) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(121) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(122) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(123) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(124) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(125) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

**KEY: air pollution, hazardous air pollutant, MACT
June 7, 2012 19-2-104(1)(a)
Notice of Continuation January 11, 2008**

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The executive secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The executive secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the executive secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any

vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that

are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the executive secretary determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the executive secretary may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The executive secretary will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the executive secretary, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the executive secretary for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the executive secretary.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in

Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the executive secretary will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A ten-day public comment period will be established.

(ii) The public comment period in (i) above will be increased to 30 days for any source that is:

(A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,

(B) subject to the requirements of R307-406, Visibility,

(C) subject to the requirements of R307-415, Operating Permit Requirements;

(D) a synthetic minor source in accordance with R307-415-4(6);

(E) located in a nonattainment area or a maintenance area for any pollutant; or

(F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii).

(iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii) above.

(v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

(3) The executive secretary will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The executive secretary will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source

or modification.

(5) If the executive secretary determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the executive secretary will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a) or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million

BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the executive secretary before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the executive secretary will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the executive secretary is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the executive secretary no

later than 60 days after the changes are made. The executive secretary will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the executive secretary to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the executive secretary. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the executive secretary or the executive secretary's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the executive secretary prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic

compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the executive secretary prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

R307-401-19. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its

location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

R307-401-20. Relaxation of Limitations.

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

KEY: air pollution, permits, approval orders, greenhouse gases

January 1, 2011

Notice of Continuation June 6, 2012

19-2-104(3)(q)

19-2-108

**R307. Environmental Quality, Air Quality.
R307-403. Permits: New and Modified Sources in
Nonattainment Areas and Maintenance Areas.**

R307-403-1. Definitions.

The following additional definition applies to R307-403: "Lowest Achievable Emission Rate (LAER)" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

R307-403-2. Emission Limitations.

Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307 and the State Implementation Plan incorporated by reference under R307-110. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements in R307-403-4, 5, and 6. The emission limitations shall be stated as a condition of the approval order.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

(2) If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(b) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

R307-403-4. Offsets: General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

R307-403-5. Offsets: PM10 Nonattainment Areas.

(1) New sources which have a potential to emit, or

modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

R307-403-6. Offsets: Ozone Nonattainment Areas.

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

R307-403-7. Offsets: Baseline.

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

R307-403-8. Offsets: Banking of Emission Offset Credit.

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

R307-403-9. Construction in Stages.

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

KEY: air quality, nonattainment*, offset*

May 6, 1999

19-2-104

Notice of Continuation June 6, 2012

19-2-108

R307. Environmental Quality, Air Quality.**R307-406. Visibility.****R307-406-1. Definitions.**

The following additional definition applies throughout R307-406:

"Adverse Impact on Visibility" means for purposes of R307-406, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the mandatory Class I area, and the frequency and timing of natural conditions that reduce visibility.

R307-406-2. Source Review.

(1) The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under R307-401, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

- (a) the costs of compliance;
- (b) the time necessary for compliance;
- (c) the energy usage and conservation;
- (d) the non air quality environmental impacts of compliance;
- (e) the useful life of the source; and
- (f) the degree of visibility improvement which will be provided as a result of control.

(2) In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

(3) The Executive Secretary shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

R307-406-3. Notification of Federal Land Managers.

(1) The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-401-4 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-406, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary

determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

(2) Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

R307-406-4. Adverse Impact.

If the analysis required by R307-406-2 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

R307-406-5. Consideration in Review.

The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

R307-406-6. Audits for Permitting.

The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

KEY: air pollution, visibility*, permits**September 15, 1998****Notice of Continuation June 6, 2012****19-2-104**

R307. Environmental Quality, Air Quality.
R307-410. Permits: Emissions Impact Analysis.
R307-410-1. Purpose.

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) effective July 1, 2005 are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the executive secretary.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2005, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the executive secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air

quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the Executive Secretary.

TABLE 1

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	100 tons per year
Lead	0.6 tons per year

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The executive secretary will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(C) In making a final determination, the executive secretary will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2005, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene

oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The executive secretary may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV- TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air contaminant to include

determinations made under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The executive secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6.

KEY: air pollution, modeling, hazardous air pollutant, stack height

June 16, 2006

19-2-104

Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.**R307-414. Permits: Fees for Approval Orders.****R307-414-1. Applicability and Definitions.**

The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to R307-401 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

R307-414-2. Bills for Service.

(1) The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

(2) The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

KEY: air pollution, fee

December 7, 2000

19-2-104(3)(o)

Notice of Continuation June 6, 2012

R307. Environmental Quality, Air Quality.**R307-415. Permits: Operating Permit Requirements.****R307-415-1. Purpose.**

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major

sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

- (i) Coal cleaning plants with thermal dryers;
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants, furnace process;
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

- (i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;
- (ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;
- (iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;
- (iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons

per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page

25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO₂ equivalent emissions.

(b) The term "tpy CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98--Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96), and summing the resultant value for each to compute a tpy CO₂e.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing

and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to

the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable

requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring,

recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this

exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use,

maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit

renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under

the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the

methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive

approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps

taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1) and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f) and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c) and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be

determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive

Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated

under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a) above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for

minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b) to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional

information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under

Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire

term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, greenhouse gases, operating permit, emission fees

March 7, 2012

Notice of Continuation June 6, 2012

19-2-109.1

19-2-104

R307. Environmental Quality, Air Quality.**R307-417. Permits: Acid Rain Sources.****R307-417-1. Part 72 Requirements.**

The provisions of 40 CFR Part 72, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the Executive Secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

R307-417-2. Part 75 Requirements.

The provisions of 40 CFR Part 75, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the executive secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 75 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 75 shall apply and take precedence.

R307-417-3. Part 76 Requirements.

The provisions of 40 CFR Part 76, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the executive secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 76 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 76 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority, operating permit

February 8, 2008

19-2-101

Notice of Continuation June 6, 2012

19-2-104(3)(q)

R307. Environmental Quality, Air Quality.**R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.****R307-420-1. Purpose.**

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

The following additional definitions apply to R307-420: "Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

- (1) for volatile organic compounds, 25 tons per year,
- (2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant", which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset*

May 6, 1999

Notice of Continuation June 6, 2012

19-2-104

19-2-108

R307. Environmental Quality, Air Quality.**R307-421. Permits: PM10 Offset Requirements in Salt Lake County and Utah County.****R307-421-1. Purpose.**

The purpose of R307-421 is to require emission reductions from existing sources to offset emission increases from new or modified sources of PM10 precursors in Salt Lake and Utah Counties. The emission offset will minimize growth of PM10 precursors to ensure that these areas will continue to maintain the PM10 and PM2.5 national ambient air quality standards.

R307-421-2. Applicability.

(1) This rule applies to new or modified sources of sulfur dioxide or oxides of nitrogen that are located in or impact Salt Lake County or Utah County.

(2) A new or modified source shall be considered to impact an area if the modeled impact is greater than 1.0 microgram/cubic meter for a one-year averaging period or 3.0 micrograms/cubic meter for a 24-hour averaging period for sulfur dioxide or nitrogen dioxide.

R307-421-3. Offset Requirements.

(1) The owner or operator of any new source that has the potential to emit, or any modified source that would increase sulfur dioxide or oxides of nitrogen in an amount equal to or greater than the levels in (a) and (b) below shall obtain an enforceable emission offset as defined in (a) and (b) below.

(a) For a total of 50 tons/year or greater, an emission offset of 1.2:1 of the emission increase is required.

(b) For a total of 25 tons/year or greater but less than 50 tons/year, an emission offset of 1:1 of the emission increase is required.

R307-421-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offsets shall be used only in the county where the credits are generated. In the case of sources located outside of Salt Lake or Utah Counties, the offsets shall be generated in the county where the modeled impact in R307-421-2(2) occurs.

(3) Emission offsets shall not be traded between pollutants.

R307-421-5. Transition Provision.

This rule will become effective in each county on the day that the EPA redesignates the county to attainment for PM10. The PM10 nonattainment area offset provisions in R307-403 will continue to apply until the EPA redesignates each county to attainment for PM10.

KEY: air pollution, offset, PM10, PM2.5**July 7, 2005****Notice of Continuation June 6, 2012****19-2-101(1)(a)****19-2-104****19-2-108**

R317. Environmental Quality, Water Quality.**R317-5. Large Underground Wastewater Disposal Systems.****R317-5-1. General.**

1.1 SCOPE: These regulations shall apply to large underground disposal systems for domestic wastewater discharges which exceed 5,000 gallons per day (gpd) and all other domestic wastewater discharges not covered under the definition of an "Onsite wastewater disposal system" in R317-1-1.13. Usually these systems should not be designed for over 15,000 gpd. In general, it is not acceptable to dispose of industrial wastewater in an underground disposal system.

1.2 ENGINEERING REPORT: An engineering report shall be submitted which shall contain design criteria along with all other information necessary to clearly describe the proposed project and demonstrate project feasibility.

1.3 SUBMISSION OF PLANS FOR REVIEW: Plans for new large underground wastewater disposal systems or extensions of existing systems shall be submitted to the Department for review as required by R317-1. All designs shall be prepared and submitted under the supervision of a registered professional engineer licensed to practice in the State of Utah and certified pursuant to R317-11. A construction permit must be issued by the Utah Water Quality Board prior to construction of the wastewater disposal system or the building(s) to be served by the wastewater system. The system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.

A. Local Health Department Requirements - it is the applicant's responsibility to ensure that the Large Underground Wastewater Disposal System (LUWDS) application to the Division is in compliance with local health department requirements regarding the location, design, construction and maintenance of an LUWDS prior to the applicant submitting a request for a construction permit to the Division of Water Quality (DWQ). Local Health Departments may petition the Division to require local review for compliance with local requirements prior to DWQ initiating its review. Where the petition has been approved by the Executive Secretary, the applicant is required to submit documentation that the local health department has approved the proposed LUWDS prior to issuance of a construction permit.

1.4 OPERATION AND MAINTENANCE: Operation and maintenance shall be provided by the owner to ensure the disposal system is functioning properly at all times. An operating permit will be required for all large underground wastewater disposal systems to monitor that proper operation and maintenance is occurring for the protection of the environment and public health. The operating permit shall be issued by the Division of Water Quality or, by delegated authority, by the local health department having jurisdiction, and shall be effective for a period not to exceed 5 years from the issuance date.

A. Operating Permit Required: The owner of a large underground wastewater disposal system shall provide a written notice of intent (NOI) to the Division of Water Quality and the local health department having jurisdiction of its intent to operate a large underground wastewater disposal facility. Those systems currently in operation must submit the NOI no later than January 1, 2010. New systems permitted under this rule must submit the NOI prior to final inspection. The notice of intent shall be specific for the operating permit and shall include the following information:

1. Facility name and address; owner name, address, and phone number.
2. List of Facility Components, e.g., septic tank, pump tank, gravel drainfield trench, gravelless chambers, pressure drainfield, etc.
3. Design flow (gallons per day) and number and type of

connections.

4. Type of waste treated and disposed, i.e., residential, restaurant, other commercial establishment, etc.

5. Sketch plan of existing system showing major facility components.

B. Local Health Department Authority to Issue Operating Permits:

1. A local health department that currently has approval from the Division of Water Quality to administer an alternative systems program may obtain authority within its jurisdiction to administer operating permits for large underground wastewater disposal systems by submitting a written request to administer this program. The request must include an agreement to implement and enforce inspection, servicing, monitoring, and reporting requirements of this rule.

2. Local health departments that have been delegated authority to administer the operating permit program must submit an annual report on or before September 1 of the calendar year, to the Division of Water Quality containing:

- (a) A list of LUWD systems under delegation.
- (b) A summary listing the compliance status of each system, showing those systems that are currently failing, and those systems that have been repaired.
- (c) A summary of any enforcement actions taken, identifying those actions that are still pending, and those that been resolved.

C. Annual Report. The owner shall submit an annual covering the period of July 1 to June 30 (the "reporting year") to the permitting agency no later than August 1 of each year. In this report, the owner shall report the following items:

1. All information required to be submitted in the NOI.
2. Checklist of inspections performed including the date of the inspection and a list of findings.
3. Packed Bed media system sampling results.
4. Signature of owner or certified operator, and date.

D. Owner Responsibility to Maintain System: The owner is responsible for maintaining its large underground wastewater disposal system and for performing periodic inspections and servicing of its system. Inspections of conventional systems (gravity, or pump to gravity) shall be not less than once each reporting year, and inspections of at-grade, pressure, mound and packed bed media systems shall be not less than twice each reporting year. At a minimum, the owner is responsible for inspecting these components of the various type of system:

1. Community septic tank or treatment unit - measure sludge and scum levels, and pump when necessary.
2. Effluent filter - clean when necessary.
3. Inspect distribution box.
4. Inspect pump, floats, alarm and control panel, and record flow or hour meter reading.
5. Disposal field - inspect for ponding or surfacing in disposal area. Flush, clean, re-adjust to equal pressure in laterals.

E. Operation and Maintenance Manual Required: New systems must have a written operation and maintenance document describing the treatment and disposal system and outlining routine maintenance procedures, including checklists and maintenance logs needed for proper operation of the system. This document must be available at the time of the final inspection on all new systems.

F. Packed Bed Media System Sampling and Monitoring Requirements:

The owner of a packed bed media system is responsible for sampling and monitoring for COD (Chemical Oxygen Demand), TSS (Total Suspended Solids) and TIN (Total Inorganic Nitrogen) at an interval not exceeding six calendar months. Additional sampling and monitoring may be required if it has been determined that there is a potential for groundwater impacts. Effluent quality of a grab sample, before discharge to

a disposal method, shall not exceed 75 mg/L COD or 25 mg/L TSS.

1. Effluent COD exceeding 75 mg/L or TSS exceeding 25 mg/L shall be followed up with weekly sampling commencing within 30 days until such time as two successive results are obtained that are within these limits. Any two successive samples resulting in exceedence of either 75 mg/L COD or 25 mg/L TSS shall result in the system being deemed non-compliant requiring further evaluation and a corrective action plan.

2. For non-complying systems, the permitting agency shall require the order:

(a) all necessary steps such as maintenance servicing, repairs, and/or replacement of system components to correct the system;

(b) effluent quality testing for COD and TSS shall continue every week until two successive samples of COD and TSS are found to be in compliance;

(c) payment of fees for additional inspections, reviews and testing;

(d) evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

(e) investigation of household practices related to the discharge of chemicals into the system, such as photo-finishing chemicals, laboratory chemicals, excessive amount of cleaners or detergents, etc.; and

(f) additional tests or samples to troubleshoot the system malfunction.

1.5 LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM REQUIRED:

The drainage system of any building or establishment covered herein shall receive all wastewater as required by R309-100, the Utah Plumbing Code and shall have a connection to a public sewer except when such sewer is not available for use, in which case connection shall be made as follows:

A. To an underground wastewater disposal system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of disposal system acceptable under R317-3.

1.6 MULTIPLE UNITS UNDER SEPARATE OWNERSHIP: Multiple Units Under Separate Ownership shall not be served by a common large underground disposal system except when, based upon sound engineering judgment, other alternatives are determined infeasible. In such cases, a common subsurface system may be used provided the following requirements are met:

A. The common subsurface disposal system and conveyance sewers shall be under the sponsorship of a body politic.

B. The subsurface absorption system shall be designed and constructed to provide duplicate capacity (two independent systems). Each system shall be designed to accommodate the total anticipated maximum daily flow. The duplicate systems shall be designed with appropriate valving, etc., to allow for periodic alternation of the use of each system.

C. Sufficient land area with suitable characteristics shall be available to provide for a third absorption system capable of handling the total maximum daily wastewater flow. This area shall be kept free of permanent structures, traffic or soil modification (See Section R317-5-3.1(L)).

D. The subsurface absorption system should be used only until a more permanent system becomes available.

1.7 NEW PROCESSES AND METHODS OF DISPOSAL: Where unusual conditions exist, other methods of disposal not described herein may be employed if approved by the Utah Water Pollution Control Committee and by the local health authority having jurisdiction. The approval will be based

on evidence of adequacy to meet water quality standards and other requirements of the Code.

1.8 UNITS REQUIRED IN A LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM: The large underground wastewater disposal system shall typically consist of the following:

- A. A building sewer with cleanout.
- B. A septic tank.
- C. An effluent filter.

D. A pressurized subsurface disposal system. This may be an absorption field, deep wall trenches, absorption beds, or, for packed bed media applications, drip irrigation dispersal, depending on location, topography, soil conditions and maximum ground water level.

E. Accessibility components to insure proper maintenance and servicing. These may include risers on tanks to the surface of the ground, with firmly secured lids; and absorption field inspection ports.

F. Pressurized systems typically require a dosing chamber or dosing tank and cleanouts at the end of pressurized laterals.

G. Additional components may also be required depending on the waste stream characteristics and the need to provide adequate protection to groundwater. These components may include pretreatment devices such as grease traps, or may involve secondary treatment using packed bed media systems.

1.9 LOCATION AND INSTALLATION: Location and installation of the wastewater disposal system shall be such that with reasonable maintenance it will function properly and will not create a nuisance, health hazard or endanger the quality of any waters of the State. Due consideration shall be given to the size and shape of the area in which the system is installed, slope of natural and finished grade, soil characteristics, maximum ground water elevation, proximity of existing or future water supplies or water courses, possible flooding and expansion potential of the disposal system.

1.10 ISOLATION: The system shall be isolated as shown in Table 5-1.

TABLE 5-1
MINIMUM HORIZONTAL SEPARATION IN FEET
(Undisturbed Earth)

	Building Sewer	Septic Tank	Absorption Field Trench	Seepage Pit or trench	Absorption Bed
Drinking Water Supply Source					
Deep Well	(a) 100	100	100	100	100
Shallow Well or Spring	(b)	(b)	(b)	(b)	(b)
Domestic Water Supply Lines	(c)	10	10	10	10
Ponds, Lakes, Reservoirs and Water Courses	---	25	(d)	(d)	(d)
Foundation Walls	3	5	25	25	25
Land Drain					
Located upslope	---	10	20	20	20
Located downslope	---	25	100	100	100
Property Line	5	5	5	15	10
Seepage Pits (Trenches)	---	5	10	12(e)	10
Absorption beds	---	5	10	10	10
Absorption fields	---	5	(f)	10	10

Footnotes:

(a) Sewers may be constructed within the 100 foot protective zone, provided the sewer construction meets the requirements of R309-106-2.3.4.

(b) It is recommended that the listed concentrated sources of pollution be located at least 1,500 feet from shallow wells and springs. Any proposal to locate closer than 1,500 feet will be reviewed on a case-by-case basis, taking into account geology, topography, existing land use agreements, designated use of water system (public or non-public) and potential for pollution of water sources. It is the responsibility of the water supply owner to establish an adequate protection zone in accordance with the applicable drinking water regulations. Even separation of 1500 feet or greater from concentrated sources of pollution will not guarantee suitability of the water supply system.

(c) The requirements stated in R317-5-1.13(F) must be met

(d) A minimum of 100 feet is desirable, but may be modified to a lesser or greater distance, depending on soil conditions or mitigating measures such as lining the water course with impervious material.

(e) Seepage pits or seepage trenches must be installed within an established absorption zone. The absorption zone will be sized based on the ratio of ground surface area "GSA" to the required sidewall area "SWA". The GSA/SWA ratio must be at least 2.5. The trenches and pits shall be installed within the absorption zone such that the spacing between trenches will be equal. Spacing of 12 feet (sidewall to sidewall) shall be a minimum. Distance to the edge or boundary of the established absorption zone shall be a minimum of 15 feet. The system must also conform to all other separation requirements identified in Table 5-1.

The required sidewall area "SWA" shall be computed based on the design application rate with the associated soil type depicted in Table 5-8. The ground surface area identified within the absorption zone will be a minimum of 2.5 times the required sidewall area. An example of a typical seepage trench design with variation is available from the Bureau of Water Pollution Control.

(f) See Table 5-4.

1.11 CONSTRUCTION INSPECTION: Approval to operate the constructed/installed facilities shall be issued following a final inspection by a representative of the Department of Health. The facilities must be inspected after installation but prior to backfilling.

1.12 CONSTRUCTION MATERIALS: Materials used in construction of the system shall be durable, sound, and not unduly subject to corrosion. Pipe, pipe fittings and similar materials shall comply with the requirements of R309-100.

1.13 WASTEWATER DRAINAGE LINE OR BUILDING SEWER: Wastewater drainage lines (or building sewers) shall comply with R309-100, the Utah Plumbing Code, or meet the following requirements, whichever is more restrictive.

A. Any generally accepted material will be given consideration, but material selected shall be suitable for local conditions to include soil characteristics, external loadings, abrasions and similar problems.

B. The lines shall have a minimum inside diameter of 4 inches, in which case they shall be laid on a minimum slope of 1.25 percent. For sewer lines serving more than one dwelling unit, it is recommended that the line be sized greater than 4 inches in diameter. Lines of greater sizes should be designed for a minimum velocity of 2 feet per second based on the pipe flowing full. See R317-3 for calculation of flow velocities.

C. The lines shall have cleanouts every 50 feet and at all changes in direction or grade, except where manholes are installed every 400 feet and at every change in direction or grade.

D. On 4-inch and 6-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree elbows are not recommended.

E. The design of wastewater pump stations shall comply with the requirements contained in R317-3.

F. Lines shall be separated from water service pipes in separate trenches and by at least 10 feet horizontally. If the local conditions prevent a 10 foot separation, or when sewer lines must cross water lines, the two lines may be placed within the 10 feet of each other, provided:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the wastewater drainage line at its highest point.

2. The water service pipe shall be placed in a separate trench or the line should be placed on a shelf of undisturbed soil

to one side of the sewer line trench.

3. The number of joints in the service pipe shall be kept to a minimum and the materials and joints of both the sewer line and water service line shall be of a strength and durability to prevent leakage under known adverse conditions. The joints between the two lines shall be staggered to the extent possible.

4. When it is impossible to obtain the proper horizontal and vertical separation as stipulated above, both the water and sewer line shall be constructed in accordance with the requirements of R309-112.2.

1.14 ESTIMATES OF WASTEWATER QUANTITY: The maximum daily wastewater flow to be disposed of should be determined as accurately as possible, preferably by actual measurement. Where this is not possible, Table 5-2 may be used to estimate the flow.

TABLE 5-2
ESTIMATED QUANTITY OF DOMESTIC WASTEWATER

TYPE OF ESTABLISHMENT	GALLONS PER DAY
Construction/work camps (semi-permanent)	60 per person
Resort camps with limited plumbing	60 per person
Country Clubs	25 per person
Dwellings	
a. Boarding house	60 per person
Additional kitchen waste for non-resident boarder	10 per person
b. Boarding schools	75-100 per person
c. Condominium	400 per unit
d. Mobile home	400 per unit
e. Single family dwelling	400 per day
f. Rooming House	40 per person
Highway Rest Areas (improved with restroom facilities)	5 per vehicle
Hospitals	250 per bed
Nursing Homes	200 per Bed
Institutions other than Hospitals and Nursing Homes	75-125 per person
Motels and Hotels	62 per person
Industrial Buildings (exclusive of industrial waste)	15-35 per person
Launderette (self-service)	50 per load
Office Buildings	
a. With cafeteria	25 per employee
b. Without cafeteria	15 per employee
Recreational Vehicle Parks/ Campgrounds	
a. Sanitary stations for self-contained Vehicles	50 per space
b. Independent spaces (temporary or transient with sewer connections)	125 per space
c. Dependent spaces (temporary or transient with no sewer connections)	125 per space
with service building including showers	35 per person (Campground)
(1) with service building but no showers	85 per space 25 per person (Campground)
d. Campground with no flush toilets	5 per person 35 per seat
Restaurants	
a. Additional for bars and cocktail lounges	2 per person
Schools	
a. Boarding	75 per person
b. Day, without cafeteria, gymnasiums or showers	15 per person
c. Day, with cafeteria, but no gymnasium or shower	20 per person
d. Day, with cafeteria, gymnasium and shower	25 per person
Service Station (per vehicle served)	5 per vehicle
Ski Areas and Visitor Centers	5 per visitor

R317-5-2. Septic Tanks.

2.1 GENERAL REQUIREMENTS: Septic tanks shall be constructed of durable materials designed to withstand expected physical loads and corrosive forces. They shall be watertight

and designed to provide settling of solids, accumulation of sludge and scum, and access for cleaning, as specified in the following paragraphs.

2.2 TANK CAPACITY: Septic tanks shall be sized on the following basis:

(1) $V = 1.5Q$ for Q less than or equal to 1500

(2) $V = 1125 + 0.75 Q$ for Q greater than 1500

V = liquid volume of tank in gallons

Q = (Maximum anticipated) wastewater discharge in gallons per day

2.3 TANK DIMENSIONS: In general, tank length should be at least 2 or 3 times the width. Liquid depth of tanks shall be at least 30 inches. A liquid depth greater than 6 feet shall not be considered in determining tank capacity.

2.4 TANK COMPARTMENTS: Septic tanks may be divided into compartments, or separate tanks may be installed in series, up to a maximum of 3, provided the following requirements are met:

A. The volume of the first compartment or tank must equal or exceed the volume of any other compartment.

B. No compartment or tank shall have an inside horizontal dimension less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except when a partition wall is used to form a multi-compartment tank. Under such conditions, an opening in the partition may be used to allow for flow between compartments, provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than 30 square inches, and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

2.5 INLETS AND OUTLETS:

A. Inlets and outlets of tanks or compartments shall be submerged or baffled to divert incoming flow toward the tank bottom and minimize the discharge of sludge or scum in the effluent.

B. Sanitary Tees may be used in lieu of baffled inlet or outlet structures.

C. All outlet baffles shall extend below the liquid surface a distance equal to approximately 40% of the liquid depth. Space between the baffle top and the underside of the tank cover shall be at least 1 inch.

D. Scum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between liquid surface and top of inlet devices, which shall be set at least 1 inch below the underside of the tank cover.

E. Inlets and outlets shall allow free venting of tank gases back through the drainage system.

F. The inlet invert shall be at least 1 inch above outlet invert.

2.6 ACCESS TO TANK:

A. Access to inlet and outlet devices shall be provided through properly placed openings not less than 18 inches in minimum horizontal dimension.

B. The top of the tank shall be at least 6 inches below finished grade.

C. If the top of the tank is located more than 18 inches below finished grade, all access openings required by subsection (1) above, shall be extended to within 18 inches of the finished grade.

2.7 ABANDONED SEPTIC TANKS: Septic tanks, cesspools and seepage pits which are no longer in use shall be completely pumped and filled with sand or soil.

2.8 DISCHARGE TO ABSORPTION SYSTEM: Septic tank effluent shall be conducted to the absorption system through a watertight sewer line meeting the requirements for wastewater drainage lines as contained in R317-5-1.13(A), (B), and (F). Tees, wyes, or other distributing devices may be used as needed. If a distribution box is used, it shall be of sufficient size to accommodate the necessary distribution line connections.

Outlet inverts shall be at the same elevation and at least 1 inch below the inlet invert. Conveyance to the absorption system must be adequately sized to handle peak hydraulic flow.

R317-5-3. Absorption Systems.

3.1 GENERAL REQUIREMENTS:

A. Suitable soil exploration, to a depth of about 10 feet, or at least 4 feet below the bottom of the proposed absorption systems and percolation tests, shall be made to provide information on subsoil conditions. Percolation tests and soil exploration reports shall be completed and submitted as part of the engineering report for the disposal facility. After January 1, 2002, the soil evaluation and percolation tests must be done in accordance with certification requirements in R317-11. A minimum of 5 percolation tests must be conducted at different sites for each disposal system. Additional tests may be required, where necessary to adequately evaluate the total absorption system or where there is significant variability in test results. In general, the system will be sized based on the slowest stabilized percolation test rate. Soil logs should be prepared in accordance with the Unified Soil Classification System by a qualified individual. Requirements outlined in R317-5-4.1 and Table 5-8 will be helpful in developing this information.

B. Absorption devices, including seepage pits or trenches, placed in sloping ground should be so constructed that the horizontal distance between the distribution line and the ground surface is at least 10 feet.

C. Soil having excessively high permeability, such as gravel with large voids, affords little filtering and is unsuitable for absorption systems. Percolation rates (R317-5-4.1) of approximately 5 minutes per inch or less usually will not be acceptable.

The extremely fine-grained "blow sand" found in some parts of Utah is generally unsuitable for absorption systems and should be avoided. If no choice is available, systems may be constructed in such material, provided it is within the required percolation range specified in this code, and the required area is calculated on the minimum percolation rate (60 minutes per inch for absorption fields and 30 minutes per inch for absorption beds).

D. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

E. Effluent distribution lines or pipe shall be perforated and should consist of 4-inch diameter pipe of appropriate material which has demonstrated satisfactory results for the given application. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

F. The coarse material in the absorption system shall consist of crushed stone, gravel, or similar material of equivalent strength and durability. It shall be free from fines, dust, sand or clay. The top of the stone or gravel shall be covered with a pervious material such as an acceptable synthetic filter fabric, a 2-inch compacted layer of straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the stone or gravel.

G. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area.

H. Absorption systems shall be backfilled with earth that is free from debris and large rocks. The first 4 to 6 inches of soil backfill should be hand placed. Distribution pipes shall not be crushed or misaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement.

I. Heavy equipment shall not be driven in or over absorption systems during backfilling or after completion.

J. That portion of absorption system below the top of distribution pipes shall be in natural soil. Under unusual circumstances the Utah Water Pollution Control Committee may allow installation in acceptably stabilized earth fill. The earth fill and location will have to be evaluated on a case-by-case basis, taking into consideration the soil characteristics and degree of consolidation of the fill material.

K. Soil and Ground Water Requirements. In areas where absorption systems are to be constructed, soil cover must be adequate to insure at least 4 feet of soil between bedrock or any other impervious formation, and the bottom of absorption systems. Maximum ground water elevation must be at least 2 feet below the bottom of absorption systems and at least 4 feet below finished grade.

L. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for replacement of the absorption system. Suitability must be demonstrated through soil exploration and percolation tests results.

3.2 ABSORPTION FIELDS: Absorption fields are the preferred type of absorption system. They consist of a series of gravel-filled trenches provided with perforated pipes designed to distribute septic tank effluent into the gravel fill, from which it percolates through the trench walls and bottom into the surrounding sub-surface soil.

A. Design of absorption fields shall be as outlined in Tables 5-3 and 5-4.

TABLE 5-3
ABSORPTION FIELD CONSTRUCTION DETAILS

ITEMS	UNITS	MINIMUM	MAXIMUM
Number of lateral trenches		2	-
Length of trenches	Feet	-	100
Width of trenches	Inches	12	36
Slope of pipe (bottom)	In./100 ft. Level	Level	Level
Depth of coarse material:			
Under pipe	Inches	6	-
Under pipe located within 10 ft. of trees	Inches	12	-
Over pipe	Inches	2	-
Size of coarse material	Inches	3/4	2-1/2
Depth of backfill over coarse material	Inches	6	-

TABLE 5-4
SIZE AND MINIMUM SPACING FOR ABSORPTION FIELD TRENCHES

Minimum Spacing of Trenches Width of trench at bottom (inches)	wall to wall (ft.)
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

B. The minimum absorption area (total bottom area of trenches) of the absorption field shall be determined from the following equation but in no case the maximum allowable application rate shall exceed 2.2 gallons per square foot per day

$$Q = 5 / \text{square root of } t$$

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day
t = stabilized percolation rate in minutes per inch

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 60 minutes per inch indicate a soil unsuitable for absorption field construction.

C. Wherever possible all trench bottoms should be constructed at the same elevation. Distribution pipes and trenches should be level and should be connected at both ends to provide a continuous system. If ground surface slope is too steep to permit a level installation, then a system of serial trenches following land contours should be used, with each trench and distribution pipe being constructed level but at a different elevation. A schematic diagram showing the recommended layout of trenches and distribution systems is available from the Bureau of Water Pollution Control.

1. The system should include drop boxes which should generally conform to the detail in Appendix 1 and should operate in such a manner that a trench will be filled with wastewater to the depth of the gravel fill before the wastewater flows to the next lower trench. The drop boxes shall be watertight and should be provided with a means of access at the top.

2. The lines between the drop boxes should be a minimum of 4 inches in diameter and should be watertight with direct connections to the distribution box. They should be laid in a trench excavated through undisturbed earth to the exact depth required. Backfill should be carefully tamped.

3.3 ABSORPTION BEDS: Absorption beds consist of large excavated areas provided with gravel fill in which effluent distribution lines are laid. They may be used in place of absorption fields when trenches are not considered desirable, and shall conform to requirements applying to absorption fields, except for the following:

A. They shall comply with construction details specified in Table 5-5.

TABLE 5-5
ABSORPTION BED CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Distance between distribution lines	Feet	-	6
Distance between distribution lines and wall	Feet	-	3
Depth to bottom of bed	Feet	1-1/2	-
Size of coarse material	Inches	3/4	2-1/2
Depth of coarse material			
Under pipe	Inches	6	-
In bed within 10 ft. of trees	Inches	12	-
Over pipe	Inches	2	-
Depth of backfill over coarse material	Inches	6	-

B. Required absorption area (total bottom area of bed) shall be determined from the following equation, but in no case shall it exceed 1.1 gallons per square foot per day.

$$Q = 2.5 / \text{square root of } t$$

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day.

t = stabilized percolation rate in minutes per inch.

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 30 minutes per inch indicate a soil unsuitable for absorption bed construction.

3.3 SEEPAGE PITS: If absorption fields or beds are not feasible, seepage pits will be considered. These consist of deep pits which receive septic tank effluent and allow it to seep through sidewalls into the adjacent subsurface soil. Seepage pits may be either hollow lined or filled with clean coarse material. They shall conform to the following requirements:

A. Number and size of seepage pits required shall be determined by calculation of seepage rate into each stratum of soil encountered in pit sidewall by reference to Table 5-8. Only pervious side-wall area below the inlet shall be considered. In order to calculate a sidewall seepage rate a representative number of soil explorations shall be evaluated to adequately identify the type and depth of each soil stratum expected throughout the absorption area. In general, a minimum of 5 explorations will be evaluated. This information shall be provided in the engineering report.

B. For the purposes of confirming an appropriate sidewall seepage rate, the owner shall submit a statement describing the character and thickness of each stratum of soil encountered during pit construction. Soil classification and assumed seepage rates shall be as specified in Table 5-8 except when valid seepage measurements are available.

C. The lining may be brick, stone, block or similar materials, at least 4 inches thick, laid in cement mortar above the inlet and with tight butted joints below the inlet. The annular space between the lining and the earth wall shall be filled with crushed rock or gravel varying in diameter from 3/4 inch to 2-1/2 inches.

D. A structurally sound and otherwise suitable top shall be provided. Structural design and materials used throughout shall assure a durable safe structure.

E. If more than one seepage pit is provided, the installation may be operated in series or parallel with distribution of effluent as specified in R317-5-2.1(G).

F. For hollow lined pits, the inlet pipe should extend horizontally at least 1 foot into the pit with a tee to divert flow downward and prevent washing and eroding the sidewall.

G. For filled pits a thin layer of crushed rock or gravel ranging from 3/4 to 2-1/2 inches in diameter, free from fines, sand, clay or organic material shall cover the coarse material to permit leveling of the distribution pipe.

TABLE 5-6
SEEPAGE PITS CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Generals			
Distance between seepage pits	feet	12(a)	-
Diameter of distribution pipe	inches	4	-
Size of coarse material	inches	3/4	12
Bottom of pit to maximum ground water	feet	2	-
Bottom of Pit in unsuitable soil or bedrock formations	feet	4	-
Hollow-lined Pits:			
Width of annular space between lining and sidewall containing crushed rock (3/4 to 2-1/2 inches in diameter)	inches	6	-
Thickness of brick, or block linings	inches	4(b)	-
Filled Pits:			
Depth of coarse material: Under pipe	feet	4	-
Over distribution pipe	inches	2	-
Depth of backfill over material	inches	6	-

Footnotes:

(a) See Table 5-1

(b) Pre-manufactured linings may be approved with thicknesses less than 4 inches.

3.5 SEEPAGE TRENCHES (MODIFIED SEEPAGE PITS):

Seepage trenches are considered as modified seepage pits and consist of deep trenches filled with clean, coarse material. They shall conform to the requirements applying to seepage pits except for the following:

A. The effective sidewall absorption area shall be considered as the outside surface of the seepage trench (vertical sidewall area) calculated below the inlet or distribution pipe. Only pervious sidewall area below the inlet shall be considered.

TABLE 5-7
SEEPAGE TRENCH DETAIL

ITEM	UNIT	MINIMUM	MAXIMUM
Seepage trench width	feet	2	-
Seepage trench length	feet	-	100
Effluent Distribution pipe			
Diameter	inches	4	-
Slope	percent	level	level
Distance between seepage trenches	feet	12(a)	-

Footnote:

(a) See Table 5-1.

TABLE 5-8
SEEPAGE TRENCHES AND PITS
ALLOWABLE SIDEWALL SEEPAGE RATES

SYMBOL AND CHARACTER OF SOIL BY UNIFIED SOIL CLASSIFICATION SYSTEM	GALLONS/ DAY/ SQ. FT.
Hardpan or bedrock (including fractured bedrock with little or no fines).	0
GW Well graded gravels, gravel-sand mixtures little or no fines.	1.55
GP Poorly graded gravels or gravel-sand mixtures, little or no fines.	1.55
SW Well graded sands, gravelly sand, little or no fines.	1.20
SP Poorly graded sands or gravelly sands, little or no fines.	1.20
SM Silty sand, sand-silt mixtures.	0.8
GM Silty gravels, poorly graded gravel-sand-silt mixtures.	1.0
GC Clayey gravels, gravelly-sand-clay mixtures.	0.45(a)
SC Clayey sands, sand-clay mixtures.	0.45(a)
ML Inorganic silts and very fine sand, rock flour, silt or clayey fine sands or clayey silts with slight plasticity.	0.45(a)
MH Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	0.45(a)(b)
CL Inorganic clays or low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	0.45(a)(b)
CH Inorganic clays of high plasticity, fat clays.	0
OL Organic silts and organic silty clays of low plasticity.	0
OH Organic clays of medium to high plasticity, organic silts.	0
PT Peat and other highly organic silts.	0

Other Impervious formations.

0

Footnotes:

(a) For the purpose of this table, whenever there are reasonable doubts regarding the suitability and estimated absorption capacities of soils, percolation tests shall be conducted in those soils in accordance with R317-4-1. Soils within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soils categories, SC, GC, and ML, MH and CL soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

(b) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

R317-5-4. Percolation Tests.

A. General Requirements.

1. A percolation test measures the rate which subsurface soil absorbs water for the purpose of identifying porous soil strata and site suitability for absorption systems, and is also a basis for estimating the design criteria of such systems to insure a reasonably long lifespan.

2. While percolation tests constitute a valuable guide for successful operation of disposal systems, considerable judgment must be used in applying the results. Percolation test results shall not be presumptive, prima facie, or conclusive evidence as to the suitability for absorption systems. Such percolation tests may be considered and analyzed as one of many criteria in determining soil suitability for absorption systems. There is no need for conducting percolation tests when the soil or other site conditions are clearly unsuitable.

3. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for absorption systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the health authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Required Test Procedures.

1. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent, certifying that the tests were conducted in accordance with these requirements, and indicating the depth and rate of each test in minutes per inch, the date of the tests, the logs of the soil exploration pits, a statement of the present and maximum ground water table, and all other factors affecting percolation test results. Percolation tests shall be conducted at the owner's expense by or under the supervision of a registered sanitarian, registered engineer, or other qualified person approved by the health authority in accordance with the following:

(a) Conditions Prohibited for Test Holes.

Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the health authority.

(b) Number and Location of Percolation Tests.

One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present.

Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the health authority and may be accepted only if conducted with an authorized representative present.

(c) Type, Depth, and Dimensions of Test Holes.

Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from 4 to 18 inches (preferably 8 to 12 inches). The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed absorption system.

2. Test Procedure for Sandy or Granular Soils

For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of 12 inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least 12 inches above the gravel seeps away in 10 minutes, or less, the test may proceed immediately as follows:

(a) Water shall be added to a point not more than 6 inches above the gravel.

(b) Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of 1 hour.

(c) If 6 inches of water seeps away in less than 10 minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed 6 inches.

(d) The final water level drop shall be used to calculate the percolation rate.

3. Test Procedure for Other Soils Not Meeting the Above Requirements.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a 4-hour period by refilling whenever necessary. Water remaining in the hole after 4 hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

(a) Any soil which has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

(b) Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of 4 hours unless 2 successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

(c) The hole shall be filled with clear water to a point not more than 6 inches above the gravel whenever it becomes nearly empty.

(d) Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

(e) When the first 6 inches of water seeps away in less than 30 minutes, the time interval between measurements shall be 10 minutes, and the test run for 1 hour.

(f) The water depth shall not exceed 6 inches at any time during the measurement period.

(g) The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

4. Calculation of Percolation Rate.

The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches or fractions thereof.

5. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

C. Recommendations to Enhance Test Procedures.

1. Soil Exploration Pit Prerequisite to Percolation Tests.

Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

2. Test Holes to Commence in Specially Prepared Excavations.

All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately 6 inches above the strata to be tested.

3. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Nails driven into a board will provide a good instrument to scarify the sides of the hole. Remove all loose soil from the bottom of the hole. Add up to 3 inches of clean coarse sand or pea-sized gravel to protect the bottom from scouring or sealing with sediment when water is added.

Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

4. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by increase intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

5. Placing Water in Test Holes.

Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

6. Percolation Rate Measurement, General.

Necessary equipment should consist of a tape measure (with at least 1/16-inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

KEY: water pollution, sewerage

April 7, 2009

Notice of Continuation June 18, 2012

19-5

R317. Environmental Quality, Water Quality.
R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems.

R317-11-1. Authority, Purpose and Scope.

1.1. This rule describes the procedures for certification and recertification of individuals who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as set forth in Title 19, Chapter 5, Section 121.

1.2. The purpose of this rule is to define the minimum requirements for those persons who design, inspect, and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as directed by the board and establish methods for compliance and evaluating non-compliance.

1.3. These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts soil evaluations or percolation tests for underground wastewater disposal systems. Certification is required by any person who performs these activities as provided below.

R317-11-2. Definitions.

2.1. "Alternative onsite wastewater system" means a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state.

2.2. "Board" means the Utah Water Quality Board.

2.3. "Certificate" means a certificate issued by the Executive Secretary stating that the recipient has met the minimum requirements to be certified as described in this rule.

2.4. "Conventional system" means an onsite wastewater system which consists of a building sewer, a septic tank, and an absorption system consisting of a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an absorption bed.

2.5. "Division" means the Utah Division of Water Quality.

2.6. "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

2.7. "Onsite professional" means a person who is certified at Level 1, 2, or 3 according to this rule.

2.8. "Training Center" means the Utah On-site Wastewater Treatment Training Center which has been designated by the Executive Secretary for training and administration of examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.

2.9. "Underground Wastewater Disposal System" means a system for underground disposal of wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems as defined in R317-1.

R317-11-3. Classes of Certification.

3.1 There are three classes of onsite professional certification, Level 1 being the lowest and Level 3 being the highest:

- A. Level 1, soil evaluation and percolation testing;
- B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems, including soil evaluations and percolation testing; and
- C. Level 3, design, inspection and maintenance of alternative or conventional underground wastewater disposal systems, including soil evaluations and percolation testing.

R317-11-4. Individuals Not Required to Obtain Certification.

4.1. An individual is not required to obtain certification to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

4.2. An uncertified individual may conduct soil evaluations or percolation tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

- A. Has the capability of properly conducting the tests, as determined by the local health department and
- B. Is supervised by a certified individual when conducting the tests.

4.3. A person involved in the pumping of an underground wastewater disposal system does not have to be certified under this rule, although licensing by the local health department is required under R317-550.

4.4. Licensed plumbers and electricians, when maintaining electrical equipment or wastewater drainage lines leading to the underground wastewater disposal systems are not required to be certified under this rule.

4.5. Uncertified employees, subordinates or associates of a certified individual are not required to be certified under this rule when working on activities related to underground wastewater disposal systems under the supervision of a certified individual. Supervision means that a certified individual is personally responsible for the work, and reviews, corrects and approves work done by an uncertified employee, subordinate or associate. Such work must be signed by a certified individual.

R317-11-5. Qualifications for Certification.

5.1. Level 1, Soil Evaluations and Percolation Testing. In order to qualify for initial Level 1 certification, a person must:

- A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 1, and
- B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 1 training course.

5.2. Level 2, Design, Inspection and Maintenance of Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing. In order to qualify for initial Level 2 certification, a person must:

- A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 2,
- B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 2 training course, and
- C. Be certified for soil evaluations and percolation testing at Level 1.

5.3. Level 3, Design, Inspection and Maintenance of Alternative or Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing. In order to qualify for initial Level 3 certification, a person must:

- A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 3,
- B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 3 training course, and
- C. Be certified for soil evaluations and percolation testing at Level 1, and certified for design, inspection and maintenance of conventional systems at Level 2.

5.4. An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act, may

waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training, the Environmental Health Scientist must provide to the Executive Secretary evidence of current licensure in Utah and 2 years experience appropriate to the class of certification requested.

5.5. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training the professional engineer must provide to the Executive Secretary evidence of current Utah licensure.

5.6. A person who is a contractor licensed under Title 58, Chapter 55, Utah Construction Trades licensing Act, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1 or 2. In order to qualify for waiver of training the licensed contractor must provide evidence of at least five years of experience in constructing underground wastewater disposal systems.

5.7. Evidence of current licensure and experience appropriate to the class of certification must be provided to the Executive Secretary at the time of application for certification.

R317-11-6. Application for Certification.

6.1. In order to become certified at any level, a person must:

A. Complete the relevant training course(s) with the Training Center (See R317-11-5.4 - 5.6 above for alternate requirements for licensed environmental health scientists, engineers, and contractors);

B. Pass the corresponding test(s); and

C. Submit an application to the Executive Secretary on forms approved by the Division, along with payment of applicable fees.

R317-11-7. Training and Examinations.

Training will be provided by the Training Center. Examinations will be given at the conclusion of each training session. Training will be provided at least twice per year, but may be given more often at the discretion of the Training Center.

R317-11-8. Certificates.

8.1. Certificates will be issued by the Executive Secretary upon receipt of the completed application, required fees, and evidence that the requirements of R317-11-5 above have been met.

8.2. Date of issuance of an initial certificate will be determined by the date the exam is passed.

8.3. Certificates will expire on December 31 of the appropriate calendar year, in accordance with R317-11-9.

R317-11-9. Renewal of Certification.

9.1. Certification renewal is required every 3 years for all levels of certification.

9.2. Eligibility for renewal of certificates is based on continuous certification.

9.3. Renewal of a certificate may be obtained within 12 months of certificate expiration by:

A. Making application to the Executive Secretary along with payment of applicable fees; and

B. Evidence of successfully completing the refresher course(s) as provided by the Training Center or other training obtained prior to certificate expiration that is approved by the Executive Secretary.

R317-11-10. Lapsed Certifications.

10.1. Expired certifications may be reinstated within 6 months after the expiration date by:

A. Completing the refresher course(s) as provided by the Training Center, and

B. Submitting a renewal application and reinstatement fee to the Division.

10.2. After the reinstatement period, initial certification requirements must be met in order to be certified.

R317-11-11. Exceptions.

The Executive Secretary has authority to consider exceptions to this rule upon written request.

R317-11-12. Suspension, Revocation, or Annulment of Certification.

12.1. Grounds for suspending, revoking, or annulling a person's certificate may be, but are not limited to, any of the following:

A. Demonstrated disregard for the public health and safety;

B. Misrepresentation or falsification of information or reports submitted to the Division;

C. Cheating on a certification exam;

D. Falsely obtaining or altering a certificate; or

E. Incompetence, misconduct or gross negligence in the performance of work done pursuant to the certification.

12.2. Disciplinary action such as suspension, revocation, or annulment of certificate by the Executive Secretary may result where it is shown that the circumstances and events relative to the work done pursuant to the certification were under the individual's jurisdiction and control. Circumstances beyond the control of the individual shall not be grounds for disciplinary action.

12.3. Any certificate not issued through due process of this rule will be annulled.

12.4. Recommendations may be made to the Executive Secretary regarding the suspension, revocation, or annulment of a certificate. Prior to making any such recommendation, the individual shall be informed in writing of the reasons for such a recommendation. The individual shall be allowed an opportunity for an informal hearing before a review committee appointed by the Executive Secretary. Any request for an informal hearing shall be made within 30 days of the date the notification is mailed.

12.5. Following an informal hearing, or the expiration of the period for requesting a hearing, the Executive Secretary shall be notified of the final recommendation.

12.6. A challenge to the Executive Secretary's determination may be made as provided in R317-9-3.

R317-11-13. Certification Requirements and Effective Dates.

After January 1, 2002, no person shall design, inspect, maintain, or conduct soil evaluations or percolation tests for an underground wastewater disposal system unless they hold current certification from the Executive Secretary, except as exempted in R317-11-4.

R317-11-14. Noncompliance.

14.1. Noncompliance with these Certification rules is a violation of Section 19-5-121 Utah Code Annotated.

14.2. Cases of noncompliance with this rule shall be referred to the Executive Secretary.

KEY: waste water, occupational licensing, certification, onsite professional

June 27, 2012

19-5-104

Notice of Continuation June 27, 2011

19-5-121

R317. Environmental Quality, Water Quality.
R317-550. Rules for Waste Disposal By Liquid Scavenger Operations.

R317-550-1. Definition.

The following definitions shall apply in the interpretation and enforcement of this rule. The word "shall" as used herein indicates a mandatory requirement. The term "should" is intended to mean a recommended or desirable standard.

1.1 Chemical Toilet - means a nonflush device wherein the waste is deposited directly into a receptacle containing a solution of water and chemical. It may be housed in a permanent or portable structure.

1.2 Collection Vehicle - means any vehicle, tank, trailer, or combination thereof, which provides commercial collection, transportation, storage, or disposal of any waste as defined in Section 1.14.

1.3 Division - means the Utah Division of Water Quality.

1.4 Health Officer - means the Director of a local health department or his authorized representative.

1.5 Liquid Scavenger Operation - means any business activity or solicitation by which wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.6 Local Health Department - means a city-county or multi-county local health department established under Title 26A.

1.7 Person - means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.8 Public Health Hazard - means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to wastes which are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, and toxic chemicals.

1.9 Scavenger Operator - means any person who conducts the business of a liquid scavenger operation.

1.10 Septic Tanks - means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention, and allow the liquids to discharge into soil outside of the tank through an underground absorption system.

1.11 Sewage Holding Tank - means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal by scavenger operation.

1.12 Tank - means any container that when placed on a vehicle is used to transport wastes removed from a septic tank, sewage holding tank, chemical toilet, or vault privy.

1.13 Vault Privy - means any facility wherein the waste is deposited without flushing, into a permanently-installed, watertight, vault or receptacle, which is usually installed below ground.

1.14 Wastes - means, for the purpose of this rule, domestic wastewater or sewage which is normally deposited in or retained for disposal in septic tanks, sewage holding tank, chemical toilets, or vault toilets.

R317-550-2. Scope of Rule.

2.1 The collection, storage, transportation, and disposal of all wastes by liquid scavenger operators shall be accomplished in a sanitary manner which does not create a public health hazard or nuisance, or adversely affect the quality of the waters of the State.

2.2 It shall be unlawful for any person to engage in or conduct a liquid scavenger operation unless the person notifies

the local health department in which the liquid scavenger operation is conducted prior to commencement of a liquid scavenger operation and thereafter on an annual basis.

2.3 Nothing in this rule shall be constructed to require a private property owner to notify the local health department prior to his removing wastes from his own septic tank, sewage holding tank, chemical toilet, or vault privy. However, all such wastes must be collected and transported in such a manner that they will not create a nuisance or public health hazard, or will adversely affect the quality of the waters of the State, and must be disposed of in accordance with the provisions of this rule.

R317-550-3. Procedures for Notification of Local Health Departments.

3.1 Prior to initiating operation of liquid scavenger services, the operator shall notify the local health department by filing a notification form. The notification form shall be provided by the local health department and shall include, but not limited to, the following:

A. Name, address, and telephone number of applicant. If a partnership, the names and addresses of the partners, and if a corporation, the name and address of the corporation.

B. Name and address of the place(s) of business if different from above.

C. Applicant shall state the number of collection vehicles to be used, description of vehicles (make, model, year, and license number), tank capacity, and any other related information required by the health officer.

D. A list of all sites shall be provided which are to be used for disposal of wastes resulting from the liquid scavenger operation. Applicants may be required by the local health department to provide proof of permission to dispose of wastes at such sites.

E. Standard notification forms are available through the Division of Water Quality.

3.2 It is recommended that all applications for liquid scavenger operations be accompanied by a surety bond issued by a corporate surety company authorized to conduct business in the State of Utah, and covering the period for which the permit is issued. The bond amount should be \$5000 for all scavenger operations conducting business within the State of Utah. The health officer should be the bond obligee, and the bond should be for the benefit and purpose to protect all persons damaged by faulty workmanship resulting from scavenger operation, and to guarantee payment of monies owing incident to these regulations. Such bonds should be conditioned upon their performance of the services in a workmanlike and hygienic manner.

3.3 Liquid scavenger operators shall notify the local health department in writing on an annual basis before March 1st of each year of their intent to continue operation.

R317-550-4. Inspection of Scavenger Operations.

4.1 Upon receipt of a notification to conduct a liquid scavenger operation, the health officer may inspect all equipment and, if necessary, disposal sites to be used in connection with the liquid scavenger operation. Routine inspections may be made at any reasonable time by the health officer in order to insure compliance with these regulations

R317-550-5. Collection Vehicle Requirements.

5.1 Collection vehicle identification requirements shall be determined by the local health department having jurisdiction.

5.2 Each collection vehicle shall conform to the following minimum specification:

A. Tanks shall be of watertight construction, fully enclosed, strong enough for all conditions of operation, and shall be provided with suitable covers to prevent spillage during transit. The capacity of the tank on U.S. gallons shall be determined accurately by calculation, metering, or as specified

by the manufacturer, and shall be plainly, legibly, and permanently marked or stamped on the exterior of the tank.

B. The collection vehicle shall be equipped with either a positive displacement pump or other type of pump which will not allow any spillage and which will be self-priming.

C. The discharge connection of the tank shall be provided with a valve and with a threaded screw cap or other acceptable sealing device. When not in use, the valve shall be closed and the threaded screws cap or sealing device shall be in place to prevent accidental leakage or discharge.

5.3 When in use, pumping equipment shall be so operated that a public health hazard or nuisance will not be created. Each collection vehicle should at all times be supplied with a pressurized wash water tank, disinfectant, and implements needed for cleanup purposes in the event of accidental spillage of waste on the ground. The operator shall ensure that such spills are cleaned and disinfected in such a manner to render them harmless to human and animals.

5.4 Sewage hoses on collection vehicles shall be thoroughly drained, capped, and stored in such a manner that they will not create a public health hazard or nuisance.

5.5 Tanks used for collection, transportation, and storage of wastes shall be so constructed that the exterior can be easily cleaned.

5.6 All collection vehicles, when parked and not in use, shall be protected and maintained in such a manner that they will not promote an odor nuisance, the breeding of insects, the attraction of rodents, or create any other public health hazard or nuisance.

R317-550-6. Conduct of Scavenger Operations, Including Submission of Reports.

6.1 All services rendered by the scavenger operation shall be conducted in a workmanlike manner and the property where the services are rendered shall be left in a sanitary condition. After the services are rendered, the scavenger operator shall furnish the customer with a written receipt which carries the business name and address of the liquid scavenger operation.

6.2 Recommendations for the pumping and maintenance of septic tanks and sewage holding tanks may be found in the Regulations For Individual Wastewater Disposal Systems promulgated by the Division. All three wastewater components, scum, sludge, and liquid waste should be removed from these tanks to provide long-term benefit.

6.3 The liquid scavenger operation shall submit summary data forms of their business activity to the local health department having jurisdiction as often required by that agency. Summary data from information shall include, but not limited to:

A. Source of all waste pumped on each occurrence, including name and address of source. If necessary, this information may be provided in code and made available for inspection at the business address of the liquid scavenger operation.

B. Specific type of waste disposal; system services on each occurrence.

C. Quantity of wastes pumped on each occurrence.

D. Name and location of authorized disposal site where pumpings were deposited for disposal.

R317-550-7. Disposal of Wastes at Approved Locations.

7.1 All wastes collected shall be disposed of in accordance with the regulations of the Division and the local health department having jurisdiction. Disposal shall be accomplished by one of the following methods:

A. Into a public sewer system at the place and point in the system designated and approved by the appropriate authority.

B. Into a landfill which has been approved by the Executive Secretary of the Solid and Hazardous Waste Control

Board for disposal of such wastes and in accordance with R315-301 through R315-320, and with concurrence by the local health department.

C. Land disposal, in accordance with the provisions of R317-8-1.10(9), if approved by the Executive Secretary and with the concurrence of the local health department.

7.2 No waste shall be deposited into a sewage collection system, a sewage treatment plant, or waste stabilization pond (lagoon), which will have a detrimental effect on their overall operation.

7.3 Under no circumstances shall dumping of wastes be permitted into any public or private lake, pond, stream, river, watercourse, or any other body of water, or onto any public or private land which has not been designated as an approved disposal site.

7.4 It shall be unlawful for any liquid waste scavenger to transport, treat, store, or dispose of hazardous wastes as defined by 19-6-102(7) without complying with all provisions of R315-1 through R315-301.

R317-550-8. Failure to Comply With Rules.

Any person failing to comply with these rules shall be subject to action as specified in Section 19-5-115.

KEY: dumping of wastes

August 29, 2001

Notice of Continuation June 18, 2012

19-5-104

R317. Environmental Quality, Water Quality.
R317-560. Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies.
R317-560-1. Definitions.

The following definitions shall apply in the interpretation and enforcement of these rules. The word "shall" as used herein means a mandatory requirement. The term "should" is intended to mean a recommended or desirable standard.

1.1 "Division" - means the Utah Division of Water Quality

1.2 "Earthen Pit Privy" - means a toilet facility consisting of a pit in the earth covered with a privy building affording privacy and shelter and containing 1 or more stools with an opening into the pit.

1.3 "Health Officer" - means the Director of a local health department or his authorized representative.

1.4 "Local Health Department" - means a city-county or multi-county local health department established under Title 26A.

1.5 "Vault Privy" - means a toilet facility wherein the waste is deposited without flushing into a permanently-installed, watertight vault or receptacle. Vault wastes must be periodically removed and disposed of in accordance with these rules.

R317-560-2. General Requirements.

2.1 Vault privies and earthen pit privies are permitted as a substitute for water closets, for temporary or limited use in remote locations where provisions for water supply or wastewater disposal pose a significant problem. The intended primary use of vault and pit privies in this rule is for facilities such as labor camps, semi-developed and semi-primitive recreational camps, temporary mass gatherings, and other approved uses. Potable water under pressure may or may not be available.

2.2 Requests for the use of vault privies or earthen pit privies shall be evaluated on a case-by-case basis by the local health department having jurisdiction and must receive the written approval of the local health officer or his designated representative prior to the installation of such devices.

2.3 Vault privies and earthen pit privies shall be located and constructed in such a manner to prevent the entrance of precipitation or surface water into the vault or pit, either as runoff or as flood water.

2.4 All vault privies shall comply with the following:

A. They shall be located a minimum of:

(1) 10 feet from property lines and water distribution pipes.

(2) 15 feet and not more than 500 feet from any living or camping spaces served.

(3) 50 feet from any nonpublic culinary water source and from any lake, stream, river, or watercourse, measured from the high water line.

B. They shall be located at least 100 feet from "deep" public water supply wells. It is recommended that vault privies be located at least 1500 feet from "shallow" wells and springs used as public water sources. Any proposal to locate closer than 1500 feet must be reviewed and approved on a case-by-case basis by the health authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate a vault privy closer than 1500 feet to a public "shallow" well or spring must submit a report to the health authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the health authority may be 100 feet. R309-106 requires a protective zone, established by the public water supply owner, before a new source is approved. Public water sources which existed prior to the requirement for a protective zone requirement may not have acquired one. Such circumstances must be reviewed on a case-by-case basis by the

health authority. "Deep" wells and "shallow" public water supply sources are as defined in R309-106.

C. The maximum high water table shall be at least 2' below the maximum depth of the vault.

2.5 All earthen pit privies shall comply with the following:

A. They shall be located a minimum of:

(1) 25 feet from property lines and water distribution pipes.

(2) 25 feet and not more than 500 feet from any living or camping spaces served.

(3) 100 feet from any lake, stream, river, or watercourse, measured from the high water line.

B. They shall be located at least 100 feet from "deep" wells that are nonpublic water supply sources. They shall be located at least 200 feet from "shallow" wells and springs that are nonpublic water supply sources. Although this latter separation distance shall be generally adhered to as the minimum required separation distance for "shallow" nonpublic water supply sources, exceptions may be approved on a case-by-case basis by the health authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate an earthen pit privy closer than 200 feet to an individual or nonpublic "shallow" well or spring must submit a report to the health authority which considers the above items. In no case shall the health authority grant approval for an earthen pit privy to be closer than 100 feet from a "shallow" well or spring. "Deep" wells and "shallow" nonpublic water supply sources shall be defined as for public water sources in R309-106.

C. They shall be isolated from public water supply sources as specified for vault privies in R317-560-2.4.B.

D. The maximum high water table shall be at least 4' below the maximum depth of the pit.

R317-560-3. Design and Construction Requirements.

3.1 All vault privies shall have vaults or receptacles which are watertight and shall be constructed of reinforced concrete, metal or other material of equal durability which has been approved by the local health department. Inside and outside surfaces of metal vaults shall be thoroughly coated with a good quality asphalt-base material.

3.2 For all earthen pit privies, pit cribbing shall be installed in the pit to prevent caving of soil into the pit and to insure a firm foundation for the building. The pit cribbing shall fit firmly, be in uniform contact with the earth walls on all sides, and shall descend to the full depth of the pit and rise flush with the ground surface.

3.3 All vault privies and earthen pit privies shall comply with the following:

A. A sill or foundation constructed of concrete or treated lumber shall be placed on the ground surface around the vault or pit so as to underlie the floor area of the privy building.

B. A floor and riser of impervious material shall be placed over the sill and vault or pit in such a manner to prevent access of rodents and insects into the vault or pit.

C. The privy building shall be firmly anchored, rigidly constructed, free from hostile surface features such as sharp edges and exposed nail points, and shall afford complete privacy and protection from the elements. The building shall be of fly-tight construction. The door(s) shall be self-closing and provided with an inside latch. Interior floors, walls, ceilings, partitions, and doors shall be finished with readily cleanable materials resistant to wastes and cleaners.

D. The building shall be ventilated by leaving approximately 4-inch openings at (1) the top of two opposite walls just beneath the roof, and (2) at the bottom of two opposite walls just above the floor, all of which are screened with 16-mesh screen or smaller of durable material. Hardware

R317. Environmental Quality, Water Quality.**R317-801. Utah Sewer Management Program (USMP).****R317-801-1. Applicability and Definitions.**

1.1 Applicability. Any federal or state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system is required to comply with this rule, R317-801.

1.2 Definitions. The following definitions are to be used in conjunction with those in R317-1-1 and R317-8-1. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

- (1) "BMP" means "best management practice".
- (2) "CCTV" means "closed circuit television".
- (3) "CIP" means a "Capital Improvement Plan".
- (4) "DWQ" means "the Utah Division of Water Quality".
- (5) "FOG" means "fats, oils and grease".
- (6) "I/I" means "infiltration and inflow".
- (7) "Permittee" means the federal and state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system or who is in direct responsible charge for operation and maintenance of the sewer collection system. When two separate federal and state agency, municipality, county, district, and other political subdivision of the state are interconnected, each shall be considered a separate Permittee.
- (8) "SECAP" means "System Evaluation and Capacity Assurance Plan".
- (9) "Sewer Collection System" means a system for the collection and conveyance of wastewaters or sewage from domestic, industrial and commercial sources. The Sewer Collection System does not include sewer laterals under the ownership and control of an owner of real property, private sewer systems owned and operated by an owner of real property, and systems that collect and convey stormwater exclusively.
- (10) "SORP" means "Sewer Overflow Response Plan"
- (11) "SSMP" means "Sewer System Management Plan".
- (12) "SSO" means "sanitary sewer overflow", the escape of wastewater or pollutants from, or beyond the intended or designed containment of a sewer collection system.
- (13) "Class 1 SSO" (Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that:
 - (a) effects more than five private structures;
 - (b) affects one or more public, commercial or industrial structure(s);
 - (c) may result in a public health risk to the general public;
 - (d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
 - (e) discharges to Waters of the state.
- (14) "Class 2 SSO" (Non Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.
- (15) "USMP" means the "Utah Sewer Management Program".

R317-801-2. General Permit Requirements.

2.1 General Permit for sewer collection system. All permittees are required to operate under the General Permit for sewer collection systems as required by this rule, R317-801.

2.2 Notice of Intent Requirements.

(1) A permittee shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems between October 1, 2012 and November 30, 2012. A new permittee for a sewer collection system shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems at least three (3) months prior to operation of the system.

(2) Forms and instructions for submitting a Notice of Intent can be obtained online on the DWQ's website.

2.3 Effective Date of General Permit.

General permit coverage will be in effect when the Notice of Intent has been submitted, approved and declared complete by the Executive Secretary.

R317-801-3. General Permit Provisions.**3.1 Prohibitions.**

(1) Any SSO that results in a discharge of untreated or partially treated wastewater to Waters of the state is prohibited.

(2) Any SSO that results in a discharge of untreated or partially treated wastewater that creates a health hazard, nuisance, or is a threat to the environment is prohibited.

3.2 General SSO Requirements.

1) The permittee shall take all feasible steps to eliminate SSOs to include:

- (a) properly managing, operating, and maintaining all parts of the sewer collection system;
- (b) training system operators;
- (c) allocating adequate resources for the operation, maintenance, and repair of its sewer collection system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure an adequate measure of revenues and expenditures in accordance with generally acceptable accounting practices; and,
- (d) providing adequate capacity to convey base flows and peak flows, including flows related to normal wet weather events. Capacity shall meet or exceed the design criteria of R317-3.

(2) SSOs shall be reported in accordance with the requirements of R317-801-4.

(3) When an SSO occurs, the permittee shall take all feasible steps to:

- (a) control, contain, or limit the volume of untreated or partially treated wastewater discharged;
- (b) terminate the discharge;
- (c) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water; and,
- (d) mitigate the impacts of the SSO.

R317-801-4. General Permit SSO Reporting Requirements.**4.1 SSO Reporting.** SSOs shall be reported as follows:

(1) A Class 1 SSO shall be reported orally within 24 hrs and with a written report submitted to the DWQ within five calendar days. Class 1 SSO's shall be included in the annual USMP report.

(2) Class 2 SSOs shall be reported on an annual basis in the USMP annual report.

4.2 Annual Report. A permittee shall submit to DWQ a USMP annual operating report covering information for the previous calendar year by April 15 of the following year.

R317-801-5. SSMP Requirements.

5.1 SSMP. The permittee shall have and implement a written SSMP and shall make it available to DWQ upon request. A copy of the SSMP shall be publicly available at the permittee's office and/or available on the Internet. The SSMP must be publicly noticed by the permittee and approved by the permittee's governing body at a public meeting. The main purpose of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sewer collection system to reduce and prevent SSOs, as well as minimize impacts of any SSOs that occur.

5.2 Contents of SSMP. The SSMP shall include:

- (1) Organization information to include:
 - (a) The name or position of the responsible or authorized representative;

(b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and,

(c) The chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to DWQ, the public (if needed) and other agencies if applicable (such as County Health Department).

(2) Sewer collection system use ordinances, service agreements, or other legally binding methods, that:

(a) Prohibit unauthorized discharges into its sewer collection system i.e. I/I, stormwater, chemical dumping, unauthorized debris and cut roots;

(b) Require that sewers and connections be properly designed and constructed;

(c) Ensure access for maintenance, inspection, or repairs for portions of the laterals owned or maintained by the permittee;

(d) Limit the discharge of FOG and other debris that may cause blockages;

(e) Require compliance with pretreatment requirements;

(f) Provide authority to inspect industrial users; and,

(g) Provide for enforcement for violations of the requirements.

(3) An Operations and Maintenance Plan which includes:

(a) An up-to-date map of the sewer collection system, showing all gravity line segments, manholes, pumping facilities, pressure pipes, gates and all other applicable conveyance facilities;

(b) A description of routine preventative operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sewer collection system with more frequent cleaning and maintenance targeted at known problem areas. The plan should include regular visual and TV inspection of manholes and sewer pipes and a system of ranking the condition of sewer pipe and manholes. The plan should have an appropriate system to document scheduled and all other types of work activities, such as a maintenance, management, system, or paper work orders;

(c) A Rehabilitation, Replacement and Improvement Plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each class of deficiencies. Rehabilitation and replacement should focus on sewer pipes that are at risk of failure or prone to more frequent blockages due to pipe defects. The rehabilitation and replacement plan shall include a CIP, if required, that addresses proper management and protection of the infrastructure assets;

(d) Schedule for training on a regular basis for staff and contractors in operations and maintenance consistent with DWQ continuing education requirements for certified operators; and,

(e) Providing for equipment and replacement part inventories, including identification of critical replacement parts. (This may include a list of vendors that the equipment and/or part can be purchased from, or local agreements).

(4) Design and performance provisions which include:

(a) Design, construction standards and specifications that meet or exceed R317-3 for the installation of new sewer collection systems, pump stations and other appurtenances and for the rehabilitation and repair of existing sewer collection systems; and,

(b) Procedures and standards for inspecting, testing and documenting the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(5) A SORP which has the following measures to protect public health and the environment:

(a) A program to respond to overflows which addresses:

1. Receipt and documentation of information regarding a

sewer overflow;

2. Dispatch of appropriate crews to the site of the sewer overflow;

3. Overflow correction, containment, and cleanup including procedures to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to Waters of the state and to minimize or correct any adverse impact on the environment resulting from the sewer overflow;

4. Preparation of an overflow report by responding personnel; and,

5. Follow up with affected persons,

(b) Procedures for prompt notification to the public.

(c) Procedures to notify appropriate regulatory agencies and other potentially affected entities to include:

1. DWQ to comply with SSO reporting requirements;

2. County Health Department, local water supply agencies as appropriate, and other affected agencies should the SSO potentially affect the public health or reach the Waters of the state;

3. Utah Division of Emergency Response and Remediation, if hazardous materials are or may be involved; and,

4. Any other required UPDES, State, or Federal reporting requirements.

(d) Procedures to ensure that appropriate staff personnel are aware of and follow the SORP and are appropriately trained.

(6) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a FOG control plan consistent with the potential for FOG discharge from commercial and industrial dischargers. Where required, the FOG control plan shall include some or all of the following:

(a) An implementation plan and schedule for a residential and commercial public education outreach for the FOG control plan that promotes proper disposal of FOG;

(b) A plan for the disposal of FOG generated within the permittee's service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG;

(c) Sewer collection system use ordinances, service agreements, or other legally binding methods, that prohibit FOG discharges to the system;

(d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;

(e) A FOG inspection, monitoring and evaluation plan;

(f) Identification of resources to do inspections and enforce the FOG control plan; and,

(g) A maintenance schedule for lines affected by FOG blockages.

(7) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a SECAP. Where required, the SECAP shall include the following:

(a) an evaluation of the wastewater collection system's existing hydraulic capacity using historical information such as flow, system records, current zoning, local development options, and maintenance records;

(b) identification of system deficiencies; and,

(c) a CIP that includes an appropriate model for the system that can be used to evaluate the hydraulic conditions in the system and identify existing and forecast future deficiencies to provide hydraulic capacity such as for future dry weather peak flow conditions, as well as the appropriate design for storm or wet weather events. The CIP shall establish a short and long term schedule to address the deficiencies and conditions identified, including a priority list, alternative analysis, and schedule for recommended upgrades. The CIP shall include

increases in pipe size, I/I reduction plans, increases in pumping capacities and/or redundancies, storage capacity increases and recommended trunk line cleaning schedules or other monitoring activities. The CIP shall identify the sources of funding. The schedule shall be reviewed and adjusted yearly.

5.3 Monitoring, Measurement, and SSMP Modifications.

(1) The permittee shall maintain relevant information that can be used to establish and prioritize appropriate SSO prevention activities and shall document all monitoring activities (i.e. daily cleaning activities, CCTV video records, manhole inspections, and hot spot activities).

(2) The permittee shall regularly review the effectiveness of each element of the SSMP and shall monitor the SECAP implementation (when required).

(3) The permittee shall annually assess the success of the operation and maintenance plan (i.e. line cleaning, CCTV inspections and manhole inspections, and SSO events) and adjust the operation and maintenance plan as needed based on system performance.

(4) The permittee shall update SSMP elements, as appropriate, based on monitoring or performance evaluations.

(5) The permittee shall regularly identify and illustrate SSO trends, including frequency, location, and volume.

(6) The permittee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every five years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the permittee's compliance with the SSMP, including identification of any deficiencies in the SSMP and steps to correct them.

(7) The permittee is encouraged to communicate with the public, as needed, on the development, implementation, and performance of the SSMP. The permittee may establish a public outreach/communication plan which shall provide the public with the opportunity to provide input to the permittee as the SSMP is developed and implemented.

(8) The SSMP shall be prepared by, or under the direction of, a Utah certified professional engineer or another qualified professional.

(9) The SSMP must be completed by the deadlines listed in the Timeframe for Implementation in R317-801-6.

by the permittee's governing body at a public meeting. A new notice certifying the revised SSMP is in place shall be sent to DWQ.

6.4 Incomplete Reports. If a permittee becomes aware that it failed to submit required information in any notice or report, the permittee shall promptly amend the notice or report.

6.5 Certification of Notices and Reports. All notices and reports submitted to DWQ shall be signed and certified as required in R317-8-3.4.

**KEY: sewer collection systems, Utah Sewer Management Program
June 21, 2012**

19-5-105

R317-801-6. Certification, Submission and Implementation Requirements.

6.1 Timeline for Notice, SSMP, and Certification. The permittee shall certify to DWQ that a SSMP is in place that is in compliance with the USMP by submitting a notice to DWQ within the time frames identified in the following time schedule:

Table 1. Timeframe for Implementation.

Task	Completion Dates by Population			
	>50,000 population	15,001 to 50,000 population	3,501 to 15,000 population	3,500 and Less population
Notice of Intent to be covered by General Permit	4 - 6 Months after effective date of rule			
Completion of SSMP (excluding SECAP)	24 months after effective date	30 months after effective date	36 months after effective date	42 months after effective date
Completion of SECAP when required	36 months after effective date	42 months after effective date	48 months after effective date	60 months after effective date

6.2 Significant Modifications. Significant modification of the SSMP must be public noticed by the permittee and approved

R356. Governor, Criminal and Juvenile Justice (State Commission on).**R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates.****R356-1-1. Authority and Purpose.**

(1) This rule is authorized in accordance with Subsection 64-13e-104(5)(b).

(2) The purpose of this rule is to establish procedures to reimburse counties for incarcerating state probationary inmates or state parole inmates and to determine the rate at which the counties shall be reimbursed.

R356-1-2. Definitions.

In addition to terms defined in Section 64-13e-102:

(1) "Total Inmate Days" means the total number of eligible probationary and state parole inmate incarceration days.

(2) "Business Day" means Monday through Friday excluding holidays.

R356-1-3. Conditions for Reimbursement of State Probationary Inmates.

Counties shall be eligible for reimbursement for days served in county correctional facilities under the following conditions:

(1) The inmate has been convicted of a felony, and as a condition of probation, has been sentenced to a county correctional facility for a period not exceeding one year. The reimbursement period will begin with the sentencing date.

(2) Days served under Subsection 1 which are eligible for reimbursement may include:

(a) Consecutive felony probation jail sentences, pursuant to Section 76-3-401;

(b) The inmate is sentenced by the courts to a county correctional facility following a violation of felony probation (Order to Show Cause). If the inmate's probation has been terminated it must be reinstated for the county to be eligible for reimbursement;

(c) The inmate is sentenced by the courts to a county correctional facility after a court has formally entered a guilty plea that had been held in abeyance as a conviction.

R356-1-4. Conditions Not Eligible for Reimbursement of State Probationary Inmates.

Counties are not eligible for reimbursement for incarcerating inmates in the following circumstances:

(1) Time served in a county correctional facility prior to sentencing, notwithstanding an order from the court for credit for time served;

(2) Time served in a county correctional facility following an unsuccessful termination of probation;

(3) Time served in a county correctional facility under a Plea in Abeyance agreement prior to the entering of the guilty plea as a conviction in the case;

(4) Time served on a felony probation sentence outside a correctional facility on electronic monitoring;

(5) Time served in a county correctional facility on a federal Immigration and Customs Enforcement hold beyond the number of days sentenced to jail by the Courts, even if probation is still in effect;

(6) Time served in a county correctional facility under the jurisdiction of the Juvenile Court;

(7) Time served in a county correctional facility on a probationary 3-day hold.

R356-1-5. Conditions for Reimbursement of State Parole Inmates.

(1) Counties shall be eligible for reimbursement for days served in county correctional facilities by state parole inmates

when the inmate is being held on a 3-day hold issued by the Board of Pardons and Parole.

(2) Counties shall be reimbursed for state parole inmates on a 3-day hold for up to 3 business days plus weekends and holidays for a maximum of 6 days of reimbursement per 3 day hold.

R356-1-6. Monthly Billing Invoices.

(1) Counties requesting reimbursement for incarcerating state probationary inmates or state parole inmates shall submit, on a monthly basis, the following information in the format specified below in an MS Excel file to CCJJ:

(a) Inmate name (last, first, middle initial);

(b) Inmate date of birth (mm/dd/yyyy);

(c) Sentencing date (mm/dd/yyyy);

(d) Court case number(s) authorizing jail as a condition of probation;

(e) Court location identified by Originating Agency Identifier;

(f) Name of judge assigned to case;

(g) Whether the requested reimbursement is for a 72 hour hold;

(h) UDC offender number if the requested reimbursement is for a 72 hour hold;

(i) Incarceration start date (mm/dd/yyyy);

(j) Release date from correctional facility (mm/dd/yyyy);

(k) Length (number of days) of court-ordered sentence;

(l) Total number of state probationary inmate days of incarceration and total number of state parole inmate days of incarceration for which the county is requesting reimbursement; and

(m) Total number of state inmates (probation and parole) for which the county is requesting reimbursement.

(2) Counties shall be reimbursed for all inmate incarceration days (felony probation and felony parole) beginning on the first day of incarceration after sentencing (day of sentencing shall be included), but never the last day of incarceration (day of release). Counties incarcerating inmates beyond eligible sentence days shall only be reimbursed for those days the inmate was eligible for reimbursement.

(3) Monthly billing invoices shall be submitted to CCJJ by the 10th business day of each month unless prior approval has been authorized by the Executive Director of CCJJ or designee. Invoices shall be submitted by email to the following email address: jailreimburse@utah.gov.

(4) CCJJ shall audit each billing invoice for accuracy, using Utah State Courts X-Change program and Department of Corrections Otrack-Ftrack data systems to verify information. When necessary, CCJJ shall contact the correctional facility or sentencing court to verify accuracy of information.

(5) Back billings or late billings are eligible for reimbursement within the same fiscal year period. The 10th business day of August shall be the final day to submit late billings for the previous fiscal year.

(6) For each monthly billing invoice submitted, CCJJ shall return to the county:

(a) An approval sheet listing total inmate days of incarceration submitted to the Division of Finance for reimbursement; and

(b) A copy of the original billing invoice with any corrections that were made to the original billing.

(7) CCJJ may request counties to submit additional information regarding inmate booking and release when necessary to complete invoice audits.

R356-1-7. Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates.

To ensure compliance with Subsection 64-13e-104(5)(c),

CCJJ shall prepare two calculations of payment for counties. CCJJ shall determine which calculation to use based upon funds appropriated by the Legislature for payment.

(1) When funds appropriated by the Legislature are sufficient to reimburse counties at a rate of 50% of the final daily incarceration rate for the preceding fiscal year established pursuant to Section 64-13e-105, the Division of Finance shall reimburse each county that houses a state probationary inmate or state parole inmate at a rate of 50% of the state daily incarceration rate multiplied by the average inmate days of incarceration established in the Administrative Rule Section R356-1-6 for the preceding five fiscal years.

(2) When funds appropriated by the Legislature are not sufficient to reimburse counties under Subsection 64-13e-104(2), each county that houses a state probationary inmate or state parole inmate shall be reimbursed by a rate calculated on a pro rata basis, based on the total inmate days of incarceration that were approved for each county for the preceding five fiscal years. The funds appropriated by the legislature will be divided by the total of inmate days of incarceration of all counties during the previous five years to establish a pro rata rate. Each county shall be reimbursed by multiplying the pro rata rate established under this subsection by the total inmate days of incarceration for each county established in this Administrative Rule Section R356-1-6 for the preceding five fiscal years.

KEY: jail reimbursement, state probationary inmates, state parole inmates
July 1, 2012

64-13e-104

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 coverage 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 or 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 Testing.

In accordance with Section 63C-11-309, 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 or substance identified on the 2012 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2012 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 Vanceryl.

(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 or other prohibited substances. 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 prohibited substance or metabolite or if the licensee is unable or unwilling to provide a sample of body fluids for such a test within 60 minutes of notification, 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-11-303; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-303.

(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" and shall be fined a minimum of their win bonus.

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for prohibited substances or their metabolites 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.

(d) Failure by the contestant to fully disclose all medications taken within 30 days of their pre-fight physical, prior to their bout, shall be deemed unprofessional conduct and double the length of any applicable suspension.

(10) Therapeutic Use Exemptions (TUEs).

(a) An applicant or licensee who believes he or she has a therapeutic reason to use a substance described in R359-1-

506(2) may request a Therapeutic Use Exemption (TUE) to permit continued use of that substance. Such a request may only be granted by the commission itself after a public hearing. The applicant or licensee shall submit the request in writing to the commission. The request shall be accompanied by supporting medical information sufficient to allow the commission to determine whether to grant their request. In reaching its decision, the commission will, at a minimum, determine whether all of the following criteria have been met:

(i) The applicant or licensee would experience a significant impairment to health if the prohibited substance were to be withheld in the course of treating an acute or chronic medical condition;

(ii) The therapeutic use of the prohibited substance would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition;

(iii) The Use of any Prohibited Substance or Prohibited Method to increase "low-normal" levels of any endogenous hormone is not considered an acceptable Therapeutic intervention;

(iv) Either reasonable therapeutic alternatives to the use of the otherwise prohibited substance have been tried or no reasonable alternative exists; and

(v) The necessity for the use of the otherwise prohibited substance is not a consequence, wholly or in part, of a prior non-therapeutic use of any substance described in R359-1-506(2).

(b) The commission may, in its sole discretion, either grant or deny the request or refer the request to the Voluntary Anti-Doping Association (VADA) or similar evaluating body for a recommendation. The evaluating body shall obtain such evaluation and expert consultation as the body deems necessary. The evaluating body shall present the commission with a written recommendation and a detailed basis for that recommendation.

(c) The applicant shall be responsible to pay any costs associated with the TUE evaluation and all subsequent mandated compliance testing.

(d) The TUE shall be cancelled, if:

(i) The contestant does not promptly comply with any requirements or conditions imposed by the commission.

(ii) The term for which the TUE was granted has expired.

(iii) The contestant is advised that the TUE has been withdrawn by the commission.

(11) Failure to disclose the use of a substance described in Rule R359-1-506(2) constitutes unprofessional conduct and subject to additional disciplinary action under Section 63C-11-303.

R359-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretionary use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretionary use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of Monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R359-1-510. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges,

timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required 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 lbs. (69.853 kgs.) or less. Contestants who weigh more than 154 lbs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R359-1-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R359-1-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in

the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R359-1-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

- (a) one referee;
- (b) three judges;
- (c) one timekeeper; and
- (d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R359-1-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R359-1-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall

summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R359-1-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R359-1-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the

scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

R359-1-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R359-1-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

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.

- (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.

- (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.

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**June 30, 2012****63C-11-101 et seq.****Notice of Continuation March 30, 2012**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective April 1, 2012. It also incorporates by reference State Plan Amendments that become effective no later than April 1, 2012.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, effective April 1, 2012, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective April 1, 2012.

(4) The Department incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective April 1, 2012.

(5) The Department incorporates by reference the Speech-Language Services Provider Manual, effective April 1, 2012.

(6) The Department incorporates by reference the Audiology Services Provider Manual, effective April 1, 2012.

(7) The Department incorporates by reference the Hospice Care Provider Manual, effective April 1, 2012.

(8) The Department incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective April 1, 2012.

(9) The Department incorporates by reference the Personal Care Provider Manual, with its attachments, effective April 1, 2012.

(10) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective April 1, 2012.

(11) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective April 1, 2012.

(12) The Department incorporates by reference the Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, effective April 1, 2012.

(13) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective April 1, 2012.

(14) The Department incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective April 1, 2012.

(15) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective April 1, 2012.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic

services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

- (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
- (ii) transportation services;
- (iii) skilled nursing facility services for patients under 21 years of age;
- (iv) emergency hospital services; and
- (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

- (i) it is medically necessary and more appropriate than any Medicaid covered service; and
- (ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

- (a) excluded as a Medicaid benefit by rule or contract;
- (b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or
- (c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

- (a) hospital a \$220 coinsurance per year;
- (b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;

(b) pregnant women;
(c) institutionalized individuals;
(d) American Indians; and
(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid

July 1, 2012

Notice of Continuation March 2, 2012

26-1-5

26-18-3

26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-2A. Inpatient Hospital Services.****R414-2A-1. Introduction and Authority.**

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital, as noted by InterQual Criteria as noted in Section R414-1-12.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours.

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in Rule R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12.

(5) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(6) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: Medicaid**July 1, 2012****Notice of Continuation November 8, 2007****26-1-5****26-18-3****26-18-3.5**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-9. Federally Qualified Health Centers.****R414-9-1. Introduction and Authority.**

(1) This rule establishes Medicaid payment methodologies for federally qualified health centers (FQHCs).

(2) This rule is authorized by 42 CFR Subpart X, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-9-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Federally Qualified Health Center" means an entity that is a Federally Qualified Health Center under the provisions of 42 CFR Subpart X.

(2) "Rural Health Clinic" (RHC) means an entity that is a Rural Health Clinic under the provisions of 42 CFR Subpart X.

R414-9-3. Payment Choices for FQHCs.

(1) An FQHC may elect to be paid under either the Prospective Payment Method (PPS) as described in R414-9-4 or the Alternate Payment Method (APM) as described in R414-9-5.

(2) If an FQHC elects to change its payment method in subsequent years, it must elect to do so no later than thirty days prior to the beginning of the FQHC's fiscal year by written notice to the Department.

R414-9-4. Prospective Payment System.

The Department pays FQHCs under a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472, 2002 edition, which are adopted by reference and modified as follows:

(1) The Department makes supplemental payments for the difference between the amounts paid by Managed Care Organizations (MCOs) that contract with FQHCs and the amounts the FQHCs are entitled to under the PPS as they are estimated and paid quarterly to the FQHCs. The Department makes quarterly interim payments no later than thirty days after the end of the quarter based on the most recent prior annual reconciliation. As necessary, the Department settles annual reconciliations with each FQHC.

(2) The Department requires FQHCs to contract with local Mental Health service (MH) providers that are paid a capitation rate by DHCF to avoid duplicate payments. FQHC MH charges are billed to MH providers which reimburse FQHCs on the basis of the MH provider fee schedule.

(3) For FQHCs servicing MCOs and capitated MH organizations, the Department annually determines and settles the difference between FQHC encounter rate and the MCO, MH, and third party liability reimbursement.

R414-9-5. Alternate Payment Method.

(1) The Department adopts an Alternate Payment Method (APM). An FQHC is required to calculate the Ratio of Covered Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government. As part of that calculation, it allocates allowable costs to Medicaid. The Department multiplies the Medicaid allowable costs by the Medicaid charge percentage to determine the amount to pay. The Department makes interim payments on the basis of billed charges from the FQHC, which reduce the annual settlement amount. Third party liability collections by the FQHC for Medicaid patients also reduce the final cost settlements.

(2) An FQHC participating in the APM must provide the Department annual cost reports and other cost information required by the Department necessary to calculate the annual settlement within ninety days from the close of its fiscal year,

including its calculations of its anticipated settlement. The Department reviews submitted cost reports and provides a preliminary payment, if applicable, to FQHCs. Within six months after the end of the FQHC's fiscal year, the Department conducts a review or audit of submitted cost reports and makes a final settlement. This allow for inclusion of late filed claims and adjustments processed after the submitted cost report was prepared. If the Department overpaid an FQHC, the FQHC must repay the overpayment. If the Department underpaid an FQHC, the Department shall pay the FQHC the underpaid amount.

(3) The Department compares the APM reimbursements with the reimbursements calculated using the PPS methodology described in R414-9-4 and pays the greater amount to the FQHC.

R414-9-6. Rural Health Clinics.

(1) The Department reimburses all RHCs through a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472.

(2) The Department pays each RHC the amount, on a per visit basis, equal to the amount paid in the previous RHC fiscal year, increased by the percentage increase in the Medicare Economic Index (MEI) for primary care services, and adjusted to take into account any increase or decrease in the scope of services furnished by the RHC during that fiscal year.

(3) For newly qualified RHCs after State fiscal year 2000, the Department establishes initial payments either by reference to payments to other RHCs in the same or adjacent areas with similar caseloads, or in the absence of other RHCs, by cost reporting methods. After the initial year, payment is set using the MEI used for other RHCs, and adjustments for increases or decreases in the scope of service furnished by the RHC during that fiscal year.

**KEY: Medicaid, facility, reimbursement
July 1, 2012
Notice of Continuation January 26, 2009**

**26-1-5
26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-49. Dental Services.****R414-49-1. Introduction and Authority.**

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October 1995 ed., Sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for pregnant women and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only.

(b) A limited problem-focused oral evaluation.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Pregnant Women: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for pregnant women.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Pregnant Women: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

R414-49-6. Reimbursement.

(1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.

(2) The amount billed cannot exceed usual and customary charges for private pay patients. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(3) Providers in urban counties (Utah, Salt Lake, Davis, and Weber counties) who sign the Dental Incentive Agreement

and providers in rural counties shall receive a 20% increase in the allowable fees paid for Medicaid dental services.

KEY: Medicaid

July 1, 2012

Notice of Continuation November 2, 2009

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-50. Dental, Oral and Maxillofacial Surgeons.****R414-50-1. Introduction and Authority.**

(1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.

(2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5).

R414-50-2. Definitions.

Definitions for this rule are found in R414-1-1. In addition:

(1) "Oral and Maxillofacial Surgeons" means those individuals who have completed a post-graduate curriculum from an accredited institution of higher learning and are board-certified or board-eligible in oral and maxillofacial surgery.

(2) "Oral and maxillofacial surgery" means that part of dental practice which deals with the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the oral and maxillofacial regions.

R414-50-3. Client Eligibility Requirements.

(1) Oral and maxillofacial surgery services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Nevertheless, physician, medical and surgical services performed by an oral surgeon are available to all categorically and medically needy clients.

(2) Dental services to non-pregnant adults ages 21 and older are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

R414-50-4. Program Access Requirements.

Oral and maxillofacial surgery services are available only from an oral and maxillofacial surgeon who is a Medicaid provider. These services are available from a dentist provider if an oral and maxillofacial surgeon is unavailable.

R414-50-5. Service Coverage.

Emergency services outlined in this section are covered services for clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Services for non-pregnant adults ages 21 and older are noted in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

(1) Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after

the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

R414-50-6. Reimbursement.

(1) Fees for services for which the Department will pay dentists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid**July 1, 2012****Notice of Continuation October 21, 2009****26-1-4.1****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-60A. Drug Utilization Review Board.****R414-60A-1. Introduction and Authority.**

(1) The Drug Utilization Review (DUR) Board aids in pharmacy policy oversight and drug utilization.

(2) The DUR Board is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

R414-60A-2. DUR Board Composition and Membership Requirements.

(1) The Director of the Division of Health Care Financing (DHCF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

(a) Four physicians from recommendations received from the Utah Medical Association.

(b) One physician engaged in Academic Medicine.

(c) Three pharmacists from recommendations received from the Utah Pharmacy Association.

(d) One pharmacist engaged in Academic Pharmacy.

(e) One dentist from recommendations received from the Utah Dental Association.

(f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).

(g) One consumer representative.

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If the Division does not receive recommendations to fill a vacant position within 30 days of a request, the Division may submit for consideration a list of potential candidates to an organization listed in Subsection R414-60A-2(1).

(c) If there are no willing nominees for appointment when an appointed term has expired, the DHCF Director may reappoint:

(i) physician members on the board to additional non-consecutive terms as needed;

(ii) pharmacist members on the board to additional non-consecutive terms as needed; and

(iii) a dentist, PhRMA member, or consumer member to additional non-consecutive one-year terms as needed.

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within DHCF.

(7) Other individuals of the DHCF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

R414-60A-3. Responsibilities and Functions.

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all

meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

(a) Adverse reactions to drugs.

(b) Therapeutic appropriateness.

(c) Overutilization and underutilization.

(d) Appropriate use of generic drugs.

(e) Therapeutic duplication.

(f) Drug-disease contraindications.

(g) Drug-drug interactions.

(h) Incorrect drug dosage and duration of treatment.

(i) Drug allergy interactions.

(j) Clinical abuse and misuse.

(k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.

(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(m) Prior Authorization criteria.

(7) The DUR Board may consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P&T) Committee.

KEY: Medicaid**September 7, 2007****Notice of Continuation June 25, 2012****26-18-3****26-1-5**

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

December 23, 2011

Notice of Continuation June 4, 2012

26-18-1

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-401. Nursing Care Facility Assessment.****R414-401-1. Introduction and Authority.**

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$14.50 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$6.80 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

(7) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.

R414-401-5. Penalties and Interest.

(1) The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment are provided in Section 26-35a-105. The Department shall suspend all Medicaid payments to a nursing facility until the facility pays the assessment due in full or until the facility and the Department reach a negotiated settlement.

(2) The Department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26-35a-105(3)(a) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment.

(3) The Department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection 26-35-105(3)(b) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full (or file its report) within 60 days of a notice of deficiency of the assessment.

(4) The Department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection 26-35a-105(4) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full (or file its report) within 75 days of a notice of deficiency of the assessment.

KEY: Medicaid, nursing facility**July 1, 2012****Notice of Continuation June 25, 2009****26-1-30****26-35a****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-506. Hospital Provider Assessments.****R414-506-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36a and governs the services allowed under 42 CFR 447.272.

R414-504-2. Definitions.

The definitions in Section 26-36a-103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Subsection 26-36a-203(3) and (4), the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

R414-506-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36a-203 or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP

Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP

Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4 (1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For State Fiscal Year 2013 and subsequent years, prior to the beginning of each state fiscal year, the Department shall determine if new providers are eligible to receive Medicaid hospital inpatient access payments. The new providers will also be subject to the assessment beginning that same state fiscal year as they become eligible to receive the Medicaid hospital inpatient access payments. New providers identified will be added prospectively beginning with that new state fiscal year (e.g., a May 2012 evaluation identifying new providers will result in those new providers being added July 2012).

R414-506-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report but failed to provide its Medicare cost report within the timeline required, DMHF shall

fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-506-6. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36a-208.

R414-506-7. Retrospective Operation.

This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 26-36a-209 of the Hospital Provider Assessment Act.

**KEY: Medicaid
July 1, 2012**

**26-1-5
26-18-3
26-36a**

R428. Health, Center for Health Data, Health Care Statistics.**R428-5. Appeal and Adjudicative Proceedings.****R428-5-1. Legal Authority.**

The Utah Health Data Committee is given rulemaking authority pursuant to Utah Code Annotated Title 26, Chapter 33a.

R428-5-2. Purpose.

The purpose of this rule is to establish procedures used by the Utah Health Data Committee for its adjudicative proceedings.

R428-5-3. Type of Proceeding.

A. The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

1. conversion of the proceeding is in the public interest;
2. conversion of the proceeding does not unfairly prejudice the rights of any party.

R428-5-4. Formal Proceedings.

A. The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

B. The content of the notice of committee action shall comply with Section 63G-4-201(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

C. Within 30 calendar days of the mailing (electronic or paper) date of a notice of committee action, the respondent or his representative shall file with the Bureau and with each person known to have a direct interest a written, signed response that includes:

1. the agency's file number or other reference number;
2. the name of the adjudicative proceeding;
3. a statement of the relief or action sought;
4. a statement of the facts;
5. a statement summarizing the reasons for granting the relief requested.

D. A conference may be scheduled by the Director of the Bureau or the presiding officer to encourage settlement before the hearing.

E. The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

F. Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

1. a statement of the presiding officer's findings of fact;
2. a statement of the presiding officer's conclusions of law;
3. a statement of the reasons for the presiding officer's decision;
4. a statement of any relief ordered by the agency;
5. a notice of the right to apply for committee reconsideration;
6. a notice of any right to administrative or judicial review available;
7. the time limits applicable to any reconsideration or review.

R428-5-5. Default and Reconsideration.

A. The presiding officer may enter an order of default against a party if:

1. a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;
 2. a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 3. a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in R428-5-4(C).
4. The order of default shall include a statement of the grounds for default and shall be mailed (electronic or paper) to all parties.

5. A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

6. In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer 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 and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

7. In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

B. Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

1. the date that an Order of Review is issued in an informal adjudicative proceeding; or
2. the date that a request for review is denied; or
3. the date that a final order is issued in a formal adjudicative proceeding.

4. The request for reconsideration shall be filed with the committee and one copy shall be sent by mail (electronic or paper) to each party by the person making the request.

5. The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

6. If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

R428-5-6. Judicial Review.

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under R428-5-5.

R428-5-7. Declaratory Orders.

A. Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

1. the specific statute or rule to be reviewed;
2. the situation or circumstances in which applicability is to be reviewed;
3. the reason or need for the applicability review;
4. the name, address, and telephone number where the petitioner can be contacted;
5. the date of submission and signature of the petitioner.

B. The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

1. the applicability or non-applicability of the specific statute or rule;
2. the reasons for the applicability or non-applicability of the specific statute or rule;
3. any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

C. The committee may as appropriate:

1. interview the petitioner;
2. consult with counsel or the Attorney General;
3. take any action the committee in its judgment deems necessary to provide that the petition receives adequate review and due consideration.

D. If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

E. The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

R428-5-8. Informal Proceedings.

A. The committee may convert a formal proceeding to informal as specified under R428-3. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

B. The presiding officer may schedule a conference to encourage settlement before issuing a decision.

C. Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

D. Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

1. the decision;
2. the reasons for the decision;
3. notice of the right to any administrative or judicial review available;
4. the time limits for requesting review.

E. 1. Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- a. be signed by the party requesting review;
- b. state the grounds for review and the relief requested;
- c. be dated the date of mailing; and
- d. be sent by mail (electronic or paper) to the presiding officer and to each party of the proceeding.

2. Within 15 calendar days of the mailing (electronic or paper) of the request for review, any party may file a response with the committee. A copy of the response must also be mailed (electronic or paper) to the presiding officer and each of the parties.

3. The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

4. If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

5. Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

- a. a designation of the statute or rule permitting or requiring review;
- b. a statement of the issues reviewed;
- c. findings of fact as to each of the issues reviewed;
- d. conclusions of law as to each of the issues reviewed;
- e. the reasons for the disposition;
- f. whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- g. a notice of any right of further administrative reconsideration or judicial review available; and
- h. the time limit applicable to any review.

**KEY: health, health policy, health planning
June 28, 2012**

Notice of Continuation November 30, 2011

26-33a-104

R512. Human Services, Child and Family Services.**R512-60. Children's Account.****R512-60-1. Purpose, Authority, Definitions, and Scope.**

(1) Purpose. The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's Account, with the funding specified in Section 62A-4a-309.

(2) Authority. This rule is authorized by Section 62A-4a-102.

(3) Definitions. For the purposes of this rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Children's Account.

(b) "CA" is the Children's Account.

(c) "Child and Family Services" means the Division of Child and Family Services.

(d) "Conflict of Interest" is defined as a situation where a Council member's private or outside economic, social, political, or volunteer interests interfere (or have the potential to, or may appear to, interfere) with that council member's duties and responsibilities.

(e) "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

(f) "Director" means Director of Child and Family Services.

(g) "RGA" stands for Request for Grant Application.

(4) Scope. Funds from the CA shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in Section 62A-4a-305.

R512-60-2. Functions of the Council.

(1) The Council shall advise Child and Family Services on matters relating to abuse and neglect and recommend how funds contained in the CA should be allocated.

R512-60-3. Conflict of Interest.

(1) Child and Family Services shall obtain written disclosure of any potential conflicts of interest from a prospective member prior to appointment to Council membership.

(2) Council members shall provide written disclosure of any potential conflicts of interest to Child and Family Services for annual review and approval.

(3) A Council member affiliated with an individual or organization that may bid on or receive a contract shall immediately provide written disclosure of this potential conflict of interest to Child and Family Services.

(4) Child and Family Services may appoint a prospective member who may have a conflict of interest on condition that they may only participate on the Council as it advises Child and Family Services on matters relating to abuse and neglect. A Council member with a conflict of interest shall not receive any information, nor participate in any discussion, presentation, consideration, or vote regarding the Council's recommendations regarding the allocation of CA funds, including any information related to RGA or contract development or review.

(5) A Council member shall not exert influence or make any requests for favored consideration from any individual on the Council or from Child and Family Services to receive a contract award. Council members participating in the development of fund allocation recommendations or RGA shall keep confidential any information prior to official public release by Child and Family Services.

R512-60-4. Responsibilities of the Director.

(1) In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(a) Designate a staff member to serve as the Administrator of the CA and as the liaison with the Council.

(b) Review policies and procedures regarding the administration of the CA which have been developed by the Council.

(c) Hold a public hearing for comments on the CA allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(d) Approve the allocation plan and prevention priorities prior to implementation.

(e) Approve policies of the CA.

R512-60-5. Proposal Requirements.

(1) A RGA shall be developed by Child and Family Services based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. RGA shall specify the purposes and eligibility requirements for projects or programs to be funded through the CA. The proposal requirements may vary from year to year.

(2) Child and Family Services shall widely disseminate RGA. Project or program proposals shall be submitted as specified in the RGA.

R512-60-6. Funding Limitations and Requirements.

(1) Funding for individual projects shall be recommended by the Council and approved by Child and Family Services based on availability of funds and identified prevention priorities, with consideration for programs or projects that serve the largest portion of the population, serve segments of the population at highest risk for abuse and neglect, or are of exceptional merit as evidence-based or evidence-informed in prevention of abuse or neglect.

(a) Contracts may be renewed according to the terms of the procurement.

(2) Each program or project funded through the CA shall provide a dollar-for-dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind. The entity that receives the statewide evaluation contract is excepted from the cash-match provisions contained in Section 62A-4a-309. Upon recommendation of the executive director and the Council, Child and Family Services may reduce or waive the match requirements for an entity, if Child and Family Services determines that imposing the requirements would prohibit or limit the provisions of services needed in a particular geographic area (Section 62A-4a-309).

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Account.

(1) Proposals received by Child and Family Services in response to the RGA shall be reviewed according to the criteria specified in the RGA, consistent with Section 62A-4a-307.

(2) The Administrator or other Child and Family Services designees shall negotiate contracts with successful offerors based on State Purchasing Guidelines.

R512-60-8. Evaluation.

(1) Each program or project funded through the CA shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be

done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. A copy of the written evaluation shall be provided to Child and Family Services, who will provide evaluation information to the Council.

R512-60-9. Research.

(1) CA funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

KEY: child welfare, child abuse, children's account

June 7, 2012	62A-4a-102
Notice of Continuation September 19, 2011	62A-4a-305
	62A-4a-309
	62A-4a-310
	62A-4a-311

R523. Human Services, Substance Abuse and Mental Health.**R523-20. Division Rules of Administration.****R523-20-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Subsection 62A-15-105(5).

R523-20-2. Purpose.

(1) The purpose of this rule is to:

- (a) establish a continuum of substance abuse standards;
- (b) clarify funding for Medical detoxification programs;

and

- (c) establish the Addiction Severity Index as the instrument used for determining a persons severity of substance abuse.

R523-20-5. Continuum of Services.

(1) Prevention means a proactive comprehensive program which provides a broad array of activities and services designed to discourage the use of alcohol, tobacco and other drugs directed at individuals who have not been identified to be in need of treatment. These activities and services must be provided in a variety of settings for both the general population as well as targeted subgroups who are at high risk for substance abuse.

(2) Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned abuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5B) as adopted by the Division of Substance Abuse and Mental Health, is maintained.

R523-20-6. Funding of Medical Detoxification Programs.

(1) Medical detoxification programs shall not be funded by the Division on an ongoing basis.

R523-20-11. Use of Standard Criteria.

(1) All contractors and subcontractors must conduct a thorough bio-psycho-social-cultural assessment of each client to determine the degree of severity of their substance abuse problem. This assessment must evaluate the client's status in a minimum of the following dimensions:

- (a) substance abuse status;
- (b) treatment history;
- (c) legal status;
- (d) educational and employment status;
- (e) family and social status;
- (f) mental health/psychiatric status;
- (g) cultural status; and
- (h) readiness to change.

(2) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Additive Medicine (ASAM).

(3) Documentation of the use of ASAM placement criteria must be included in each patient's record.

KEY: substance abuse, financing of programs, service continuum, assessment instruments

July 12, 2011

62A-15-105(5)

Notice of Continuation June 5, 2012

R523. Human Services, Substance Abuse and Mental Health.**R523-22. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.****R523-22-1. Purpose and Statutory Authority.**

1. Purpose. These rules prescribe standards for approval of programs and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6-44, 62A-15-103, 62A-15-105, 17-43-201 62A-15-501-503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the offender examine the behavior which resulted in his arrest, (b) assist him in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon him the severity of the DUI offense.

R523-22-2. Definitions as Used in These Standards.

1. "DUI Educational Program" herein referred to as program is an instructional series operated by a licensed substance abuse treatment program which satisfies the standards established by the Division.

2. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

3. "Certificate" is a written authorization issued by the Division to indicate that the Program has been found to be in compliance with these Division standards.

4. "Offender" is an individual convicted of violating Section 41-6-43, 41-6-44, 41-6-45, or 73-18-12 through 73-18-12.2.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person who has been certified by the Division to instruct in educational programs for court-referred offenders convicted of DUI.

R523-22-3. Certification Requirements for DUI Educational Programs.

1. In order to operate, a DUI Educational Program shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification will require that the program provide, among other things:

- a. a brief description and purpose of program, plus explanation of program's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;
- b. the geographical area to be served;
- c. the ownership and person or group responsible for program operation;
- d. the location and time that DUI classes are normally held;
- e. a list of instructors employed by the program; and
- f. a copy of their substance abuse treatment license.

3. A DUI Educational Program shall also:

- a. ensure that offenders receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;
- b. allow no more than 25 persons, including offenders and others to a class;
- c. follow the recommendations of the screening which has been provided;
- d. ensure that screenings are conducted by staff from a licensed treatment program who have been trained in administering the screening tool;
- e. report the number of offenders completing the DUI Educational Program to the Division;
- f. have policies ensuring confidentiality of information maintained on offenders that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;
- g. ensure that instructors follow the Division-approved curriculum;
- h. have available for review a copy of the program's charter, constitution, or bylaws;
- i. outline the eligibility criteria for admission to the program, including the screening tool used;
- j. ensure that all instructors employed by the program have completed the Division required DUI training/certification; and
- k. comply with all applicable local, state and federal laws and regulations.

4. An offender's participation in the DUI Educational Program shall not be a substitute for treatment required by the courts.

5. The Division shall issue the program a certificate after determination has been made that the applicant is in compliance with these standards.

6. The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-22-4. On-site Survey of Program.

1. After a review of the application, a site review will be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of program certification, to permit representative(s) of the, Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

2. The DUI Educational Program also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

3. Review Procedures. Within 30 days after completion of the on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-22-5. Instructor Certification.

1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

- a. All instructors employed by any DUI Educational Program shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Program.
- b. All instructors shall attend and complete the requirements of the instructor training sponsored by the Division.
- c. Requirements in A and B above shall be complete and verifiable.
- d. The instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a

DUI Educational Program.

e. The instructors must agree to attend all required DUI training sessions sponsored or approved by the Division.

Notice of Continuation June 18, 2012

62A-15-201
17-43-301
73-18-12.1-2

R523-22-6. Recertification of Instructors.

1. An instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The instructor must sign a register at those training sessions which have been set aside for DUI instructor recertification.

2. It is the responsibility of the instructor to notify the Division immediately of any address change.

3. The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-22-7. Corrective Action for a Program or an Instructor.

1. If the Division becomes aware that a DUI education program or an instructor is in violation of these standards, it shall proceed with the following steps:

a. Within 30 days of becoming aware of the violation, the Division shall notify the program or the instructor in writing of the area(s) of noncompliance.

b. Within 30 days of receiving notification of violation, the program or the instructor shall submit a written plan to the Division for achieving compliance.

c. If the written plan is not accepted as satisfactory by the Division within 30 days the program or the instructor shall be notified that they have been suspended until compliance is achieved.

d. A program or an instructor must cease conducting any DUI Educational Program until the suspension is lifted.

e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the program or instructor's certification.

R523-22-8. Revocation of a Program's or an Instructor's Certification.

1. The Division shall revoke the certification of a program or an instructor for the following reasons:

a. If the program or the instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

b. If the program or the instructor continues to conduct any DUI Educational Program during the period of suspension, or

c. If any program or instructor receives more than two notices of noncompliance with these standards in a one-year period.

2. If any program or instructor's certification is revoked, they may not reapply for recertification for a period of six months.

R523-22-9. Redress Procedures for Programs or Instructors.

1. Any program or instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the program or the instructor in writing of the decision as required under UCA Section (63G-4-302) and UACA R503-2-1 through R503-2-21.

2. If they so choose, the program or the instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under UCA Section (63G-4-302).

**KEY: DUI programs, certification of instructors
July 3, 2001**

41-6-44

R523. Human Services, Substance Abuse and Mental Health.**R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.****R523-23-1. Authority, Intent, and Scope.**

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

- (a) certification of providers;
- (b) approval of the Seminar curriculum;
- (c) the ongoing activities of providers; and
- (d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification

of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

R523-23-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-23-6. Division Responsibilities.

The Division shall maintain the database of servers who have completed the seminar.

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the

Division. This curriculum must provide at least three hours of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

- (i) facts about alcohol;
- (ii) what alcohol is; and
- (iii) alcohol's path through the body.
- (b) Factors influencing the effect of alcohol including:
 - (i) food and digestive factors;
 - (ii) weight, physical fitness and gender factors;
 - (iii) psychological factors;
 - (iv) tolerance; and
 - (v) alcohol used in combination with other drugs.
- (c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

- (ii) classification of behavioral signs; and
- (iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

- (i) use of classification system;
- (ii) use of alcohol facts;
- (iii) continuity of service; and
- (iv) drink counting.
- (e) Overview of state alcohol laws:
 - (i) Utah liquor distribution and control;
 - (ii) legal age;
 - (iii) prohibited sales;
 - (iv) third party liability and the Dram Shop Law;
 - (v) legal definition of intoxication; and
 - (vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

- (g) Intervention techniques:
 - (i) slowing down service;
 - (ii) offering food or nonalcoholic beverages;
 - (iii) serving water with drinks;
 - (iv) not encouraging reorders; and
 - (v) cutting off service.
- (h) Establishing house rules for regulating alcoholic beverages:

(i) management and co-workers' support; and

(ii) dealing with minors; and

(i) Alternative means of transportation and getting the customer home safely:

- (i) ask customer to arrange alternative transportation;
- (ii) call a taxi or transportation service;
- (iii) accommodations for the night; and
- (iv) telephone the police.

R523-23-8. Examination.

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-23-10. Grounds for Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-23-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the

action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training, on-premise

March 9, 2012

62A-15-105(5)

Notice of Continuation June 18, 2012

62A-15-401

R527. Human Services, Recovery Services.**R527-3. Definitions.****R527-3-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to identify the terms and definitions used by the Office of Recovery Services/Child Support Services not currently defined by law.

R527-3-2. Definitions.

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-303, 62A-11-401, and 78B-14-102. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.
3. "ORSIS" means the Office of Recovery Services Computer Information System.
4. "BMC" means the Bureau of Medical Collections.
5. "CIC" means the Bureau for Children in Care.
6. "CSS" means Child Support Services.
7. "MSS" means Management Support Services.
8. "CSU" means the Customer Service Unit.
9. "BFS" means the Bureau of Financial Services.
10. "BET" means the Bureau of Electronic Technology.
11. "OT" means the Office of Technology.
12. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.
13. "IV-D recipient" refers to a person who receives IV-D services.
14. "IV-A" refers to Title IV-A of the Social Security Act.
15. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.
16. "IV-A recipient" refers to a person who receives IV-A benefits.
17. "UIFSA" refers to Title 78B, Chapter 14 (Uniform Interstate Family Support Act) which replaces "URESAs", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).
18. "AFDC" refers to the former Aid to Families with dependent children program.
19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).
20. "Pass-through payment" as used in R527-40-1(3) refers to the first \$50 of the current support that ORS collected for a month in which the custodial parent received AFDC. The IV-A agency paid this amount to the AFDC household prior to March, 1997.
21. "IRS" refers to the Internal Revenue Service.
22. "TPL" means Third Party Liability.
23. "CP" means custodial parent.
24. "NCP" means non-custodial parent.

KEY: child support, welfare**November 10, 2009****Notice of Continuation June 12, 2012**

**62A-1-111
62A-11-103
62A-11-107
62A-11-303
62A-11-401
78B-14-102**

R527. Human Services, Recovery Services.**R527-37. Closure Criteria for Support Cases.****R527-37-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide the federal regulation that is incorporated by reference.

R527-37-2. Closure Criteria for Support Cases.

This rule establishes the criteria a support case must meet in order to be eligible for case closure under federal regulations. The Office of Recovery Services adopts the federal regulations as published in 45 CFR 303.11, October 1, 2008 ed., which are incorporated by reference.

KEY: child support**April 2, 2010****Notice of Continuation June 12, 2012****62A-11-107****62A-1-111**

R527. Human Services, Recovery Services.**R527-253. Collection of Child Support Judgments.****R527-253-1. Collection of Child Support Judgments.**

1. The Office of Recovery Services/Child Support Services (ORS/CSS) may demand and collect immediate payment in full, or may demand and collect payments that will result in payment in full within a period of time that is deemed to meet the interests of the state in child support judgment matters.

2. ORS/CSS may collect a child support judgment through income withholding, liens, tax refund intercepts, and any other legal remedy available. Initiation of a particular remedy shall not limit ORS/CSS from initiating any other remedy at the same time.

KEY: administrative law, child support

August 17, 1998

62A-11-320

Notice of Continuation June 12, 2012

R527. Human Services, Recovery Services.**R527-255. Substantial Change in Circumstances.****R527-255-1. Authority and Purpose.**

1. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide information about when a parent can request a review of the child support amount when a support order is less than three years old, and to identify what must be included for a request for review to be complete. The rule also defines when a change in circumstance is considered temporary or permanent.

R527-255-2. Request for Review based on Substantial Change in Circumstances.

1. A parent may request a less than three year review of a support order based on an alleged substantial change in circumstances. For the request to be complete, the parent must provide documentation of the alleged change at his/her own expense.

R527-255-3. Duration of the Change in Circumstances.

1. If the change in circumstances is projected to be temporary, defined as less than 12 months in duration, the office shall not initiate proceedings to adjust the award.

2. If the change in circumstances is projected to be long term or permanent, defined as 12 months or more in duration, the office shall initiate proceedings to adjust the award pursuant to Sections 78B-12-217 and 78B-12-218.

KEY: child support**August 13, 2008****Notice of Continuation June 12, 2012****62A-11-107****78B-12-217****78B-12-218****62A-11-320.5****62A-11-320.6**

R527. Human Services, Recovery Services.**R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.****R527-258-1. Purpose and Authority.**

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to specify the procedures for collection of IV-D child support and arrears payments after the obligor has been released from prison/jail or an in-patient treatment program.

R527-258-2. Collection from Ex-Prisoners.

1. If the obligor has been incarcerated for thirty days or more and notifies the Office of Recovery Services/Child Support Services (ORS/CSS) or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the incarceration release date.

2. The ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-3. Enforcing Child Support When the Obligor is an Ex-Prisoner.

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven one time, if the obligor makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The twelve consecutive month period begins when the obligor is released and they have contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent period of incarceration shall be forgiven. IV-A debt forgiveness due to incarceration will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

R527-258-4. Collection from Obligor in Treatment Programs.

1. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program for thirty days or more, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment.

2. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program and notifies ORS/CSS or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the in-patient program release date.

3. If the obligor is involved in an out-patient treatment program and notifies ORS/CSS or the office is made aware of the treatment within 30 days of the treatment beginning, the

office will only collect current support and one dollar toward the past-due support debt for six months after:

a. the obligor's initial contact with the office, or

b. the office determines that the individual is involved in an out-patient treatment program.

4. ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-5. Enforcing Child Support When the Obligor Is in a Treatment Program.

1. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven one time, if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and s/he has contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

**KEY: administrative law, child support
November 3, 2009
Notice of Continuation June 12, 2012**

**78B-12-212
62A-11-107
62A-11-320(1)**

R527. Human Services, Recovery Services.**R527-330. Posting Priority of Payments Received.****R527-330-1. Posting Priority of Payments Received.**

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

KEY: child support, debt, public assistance programs
December 16, 1999 **62A-11-107**
Notice of Continuation June 12, 2012

R590. Insurance, Administration.**R590-122. Permissible Arbitration Provisions.****R590-122-1. Authority.**

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

R590-122-2. Purpose and Scope.

This rule recognizes the emergence of arbitration as a speedy and inexpensive method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

1. define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2);
2. provide guidelines upon which disclosure of a contract arbitration provision is to be made. This rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

R590-122-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

1. Those certain definitions set forth in Section 78B-11-102 of the "Utah Arbitration Act."
2. "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.
3. "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.
4. "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-122-4. Rule.

1. Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."
2. Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.
3. Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."
4. Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under Section 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed under Section 31A-21-107 and applied as if in compliance with the Insurance Code.
5. Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM

THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

6. Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

7. All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78B, Chapter 11).

8. Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

9. No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

KEY: insurance law**October 8, 1997****Notice of Continuation June 18, 2012****31A-2-201**

R590. Insurance, Administration.**R590-149. Americans with Disabilities Act (ADA) Grievance Procedures.****R590-149-1. Authority and Purpose.**

(1) This rule is promulgated pursuant to Section 31A-2-201(3)(a) and Subsection 63G-3-201(3) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35, and 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 the Insurance Department, or be subjected to discrimination by the department because of a disability.

R590-149-2. Definitions.

(1) "The ADA Coordinator" means the employee assigned by the commissioner to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the department.

(2) "Department" means the Insurance Department.

(3) "Designee" means an individual appointed by the commissioner or a 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" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" includes caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department. A qualified individual also who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R590-149-3. Filing of Complaints.

(1) Any qualified individual 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 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 shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate

the prompt and effective consideration of pertinent facts and appropriate remedies; however, the commissioner has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

(e) be signed by the 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.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R590-149-4. Investigation of Complaint.

(1) The ADA coordinator or designee 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 Subsection R590-149-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource 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 Department of Human Resource Management, 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;

(b) require facility modifications; or

(c) require reassignment to a different position.

R590-149-5. Issuance of Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director in writing or in another acceptable suitable format stating what action, if any, should be taken on the complaint.

(2) If the coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or by another acceptable format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(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 shall render a decision within 15 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, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R590-149-6. Appeals.

(1) The complainant may appeal the decision of the director to the commissioner by filing an appeal within ten working days from the receipt of the director's decision.

(2) The appeal shall be filed in writing, or in another accessible format reasonably suited to the complainant's ability.

(3) The commissioner may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the commissioner'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 commissioner 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 commissioner may direct additional investigation as necessary. The commissioner shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, 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;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The final decision shall be issued by the commissioner within fifteen working days after receiving the complainant's appeal and shall be in writing or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the commissioner or designee is unable to reach a final decision within the fifteen working day period, he shall notify the complainant in writing or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a decision.

R590-149-7. Classification of Records.

(1) Records created in administering this rule are classified as "protected" under Subsection 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R590-149-5 or a final decision upon appeal under Section R590-149-6, portions of the record pertaining to the complainant's medical condition shall remain classified as "private" as defined under Section 63G-2-302(1)(b) or "controlled" as defined in Section 63G-2-304, as consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or commissioner shall be classified as "public" information. All other records, except "controlled" records under Subsection R590-149-7(2), shall be classified as "private."

R590-149-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(1) the state Anti-Discrimination Complaint Procedures Section 67-19-32 and 34A-5-107;

(2) the Federal ADA Complaint Procedures 28 CFR 35.170 through 28 CFR 35.178; or

(3) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: insurance, ADA

August 2, 2011

Notice of Continuation June 18, 2012

63G-3-201(2)

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusted assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write disability or property and casualty insurance:

- (a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
- (b) reserves for losses reported and outstanding;
- (c) reserves for losses incurred but not reported;
- (d) reserves for allocated loss expenses; and
- (e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability or annuity insurance:

- (a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- (b) aggregate reserves for disability policies;
- (c) deposit funds and other liabilities without life or disability contingencies; and
- (d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

- (a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the

state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

- (a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- (b) reserves for reinsured losses reported and outstanding;
- (c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-8.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than \$20,000,000. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the group's aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of

the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent

jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered

pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

- (1) cash;
- (2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or
- (4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of the applicable portions of Sections R590-173-9 and 10 of this rule have been satisfied.

R590-173-9. Trust Agreements Qualified under Section 8.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsection R590-173-9.A.(11).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts

held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-8. in conjunction with a reinsurance agreement covering life, annuities or disability risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-9.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required in Subsection R590-173-9.C.(1)(b), so long as these required conditions are included in the trust agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to

satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-9.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust will not exceed 5% of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;

(c) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-9.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Subsection R590-173-9.C.(1)(e); and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-9.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(3) Financial reporting

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements

Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-10. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-11. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-12. 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 this rule and its application to other persons or circumstances are not affected.

KEY: insurance

July 16, 1997

Notice of Continuation June 27, 2012

31A-2-201

R590. Insurance, Administration.**R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.****R590-240-1. Authority.**

This rule is promulgated and adopted pursuant to Subsection 31A-1-103(3)(d) and Section 31A-2-201.

R590-240-2. Purpose and Scope.

(1) The purpose of this rule is to exempt student health programs established by institutions of higher education from regulation under the Utah Insurance Code.

(2) Health insurance from an insurer made available by an institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:

- (i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or
- (ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.

R590-240-3. Definitions.

(1) All definitions in Section 31A-1-301 are incorporated by reference.

(2) "Board" means the State Board of Regents established in Section 53B-1-103.

(3) "Eligible member" means:

- (a) an eligible student;
- (b) a spouse of an eligible student; or
- (c) a child of, dependent of, or child placed for adoption with, an eligible student.

(4) "Eligible recipient" means:

- (a) an eligible member;
- (b) the institution's officers, faculty, and employees; or
- (c) upon application by the institution or the institution's student health center, other persons approved by written order of the commissioner.

(5) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.

(6) "Health care provider" means a person who provides health care services.

(7) "Health care services" means "health care" as defined in Section 31A-1-301.

(8) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

- (a) an institution described in Section 53B-1-102; or
- (b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

(9) "Student health center" means a facility that is operated to provide health care services to eligible recipients:

(a) by that institution or pursuant to contract with that institution;

(b) that employs health care providers, or contracts with health care providers, which may make referrals to other health care providers;

(c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period of time for which the eligible student is registered:

(i) a fee assessed to and paid by each eligible student at registration; or

(ii) the tuition paid by the eligible student;

(d) may accept insurance payments, or assist users in completing claims forms for insurance claims; and

(e) may require eligible recipients to pay;

(i) an additional fee for each time the student health center is visited;

(ii) an additional fee for specialty services;

(iii) an additional fee for medical equipment; or

(iv) an additional fee for medication received at the student health center.

(10)(a) "Student health program" means a plan organized, established, or adopted, by an institution to provide or arrange for health care services for eligible members.

(b) A "student health program" may include providing:

(i) coverage for limited health care services;

(ii) coverage for health care services on an emergency basis; or

(iii) coverage for health care services by out-of-area health care providers under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

(B) during periods when the individual is not enrolled in any classes at the institution, but is still matriculated with the institution. Such periods may include time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during periods when the individual is enrolled in classes at the institution, but is not living within commuting distance of the institution, such as while participating in an internship program.

(11)(a) "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

(i) the institution, and

(ii) any of the following or any combination of the following:

(A) a healthcare provider;

(B) a clinic or other association of health care providers;

(C) a network plan; or

(D) an insurer authorized to provide health insurance.

(12) "Utah Insurance Code" means Title 31A, Utah Code Annotated.

R590-240-4. Supporting Facts.

(1) Student health programs are offered only to eligible members at institutions. These institutions have an interest in providing affordable health care coverage to their students in order to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs. In some instances, student health programs may also be offered to the spouses of students and other dependents of students, as well.

(2) Student health programs are not established to enable the institutions to make a profit from providing health care coverage. Providing or arranging for health care services for students is not the primary purpose of institutions; it is only incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. In addition, the economic impact on health care providers directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by providing students at institutions with access to affordable health care coverage through student health programs.

(3) An institution is either a state institution under the direct control of, and supervised by, the Board, or it must be accredited by the Northwest Commission on Colleges and Universities. In order to be accredited, an institution must meet strict accounting standards, and be able to demonstrate it is financially solid. An institution must therefore comply with the

strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which would include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program. Any shortfall in providing health care services at the student health center would become the obligation of the institution.

R590-240-5. Exemption Requirements.

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

- (1) A student health program must:
 - (a) be established by an institution;
 - (b) have assets that are owned by:
 - (i) an institution;
 - (ii) a trust; or
 - (iii) the trustees, in their fiduciary capacities, of a trust established by an institution; and
 - (c) be operated by:
 - (i) an institution; or
 - (ii) the institution's authorized agent or affiliate.
 - (2) The primary purpose of the institution must be higher education, and not the providing of a student health program.
 - (3) Payment of covered claims of the student health program must be secured by adequate assets:
 - (a) that are:
 - (i) secured by being:
 - (A) pledged;
 - (B) guaranteed;
 - (C) contributed;
 - (D) placed in trust; or
 - (E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and
 - (ii) secured under Subsection 5(3)(a)(i) by:
 - (A) the student health program;
 - (B) the institution that organizes, adopts, or establishes the student health program;
 - (C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);
 - (D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or
 - (E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and
 - (b)(i) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; or
 - (ii) as approved by the commissioner by written order; and
 - (c) under such terms and conditions as the commissioner determines by written order.
 - (4) The student health program may not be offered to or enroll anyone other than an eligible member.
 - (5) The student health program must have a comprehensive legal structure that demonstrates that:
 - (a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;
 - (b) the student health program will be administered by an experienced administrator; and
 - (c) the student health program shall be administered according to contracts between:
 - (i)(A)(I) the student health program; or
 - (II) the institution; or
 - (III) both the student health program and the institution;
- and
- (B) the enrollees; and

- (ii)(A)(I) the student health program; or
 - (II) the institution; or
 - (III) both the student health program and the institution;
- and
- (B) health care providers.
 - (6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:
 - (a) at a student health center; or
 - (b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.
 - (7) Any supplemental health care services provided by the student health program must:
 - (a) be obtained from an insurer authorized to provide health insurance;
 - (b) be backed by assets under the conditions set forth in Subsection 5(3); or
 - (c) use a combination of Subsections 5(7)(a) and 5(7)(b).
 - (8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.
 - (9) The student health program or the institution or both shall annually provide the department an informational copy of all current policies, booklets, and advertising.
 - (10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.
 - (11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.
 - (12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

R590-240-6. Procedure for Obtaining Exemption.

- (1) An institution desiring to have its student health program exempted from the provisions of the Utah Insurance Code shall file with the Utah Insurance Department an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support the exemption requirements in Section 5 have been met. The application must provide assurance the institution has sufficient assets placed in trust, or otherwise pledged or guaranteed under Section 3, under conditions acceptable to the commissioner, to meet any liability the institution may have for its student health program.
 - (2) The commissioner may require the following:
 - (a) additional evidence or information, to be provided by the institution;
 - (b) an examination of the student health program by the department, the costs of which shall be borne by the institution; or
 - (c) a hearing on the application.
 - (3) Upon finding that the student health program complies with the provisions of this rule, the commissioner may issue an order exempting the student health program from the provisions of the Utah Insurance Code. The commissioner may place any

restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from the Utah Insurance Code unless the commissioner has issued a written order explicitly stating the student health program is exempt from the Utah Insurance Code.

(5) The department shall retain continuing jurisdiction over the institution's student health program to assure compliance with the terms and conditions in Section 5, including any changes in the law or the facts upon which the exemption is granted.

R590-240-7. Rule and Findings.

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

(i) apply for authority to conduct the business of an insurer, or

(ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

R590-240-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-240-9. 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 such provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance exemptions

August 8, 2007

Notice of Continuation June 7, 2012

31A-1-103

31A-2-201

R600. Labor Commission, Administration.**R600-2. Operations.****R600-2-1. Business Hours.**

The offices of the Commission shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Commission offices shall not be open for business Saturday or Sunday and on state-recognized holidays. Any official document, including fax transmissions, received when the Commission is not open, including fax transmissions after 5:00 p.m. shall be considered received on the next working day.

KEY: labor commission, hours of business**October 11, 2011****34A-1-104****Notice of Continuation June 19, 2012**

R602. Labor Commission, Adjudication.**R602-1. General Provisions.****R602-1-1. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

4. All legal counsel who appear on behalf of a party before the Adjudication Division are required to file with the Division the electronic address to receive delivery of documents in adjudicative proceedings before the Division.

5. All legal counsel who deliver documents to the Adjudication Division on behalf of a party shall include the e-mail address of the party represented to receive delivery of documents in adjudicative proceedings before the Division. Failure to provide a party's electronic address gives the Adjudication Division consent to deliver that party's document(s) to their attorney of record.

R602-1-4. Filing of Documents.

1. Pursuant to Section 34A-1-304 and subject to the limitations and requirements of this rule, a document required or permitted by statute or rule may be delivered by electronic means. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing, electronic transmittal, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

3. Delivery by electronic transmittal is limited to documents in PDF format delivered to sites specified by the Adjudication Division or the Commission. Documents delivered by electronic transmittal must include signatures. Electronic documents filed in non-PDF format are not considered delivered to the Division of Adjudication.

4. Each electronically transmitted document shall include a delivery certificate that lists the time and date on which the document was transmitted, the name of the person who transmitted the document, and the name and email address of each person or entity to which the document was transmitted. If a party utilizes delivery by electronic transmittal, the

document filed must include an electronic address where the party may receive documents. The Adjudication Division and all opposing parties may use electronic transmittal as the sole method of delivery to that party.

5. The first document delivered to the Adjudication Division becomes the original document filed. Any copies of the document filed with the Adjudication Division will not be retained.

R602-1-5. Official Record.

As contemplated by Section 34A-1-302(3) the only official record of any formal or informal hearing conducted by the Division is the audio recording kept by the administrative law judge during the hearing. Any recording or record kept of a formal or informal hearing other than that kept by the administrative law judge shall not be used for any purpose requiring an official record of the proceedings as contemplate by Section 34A-1-302(3).

KEY: witness fees, time, administrative procedures, filing deadlines**June 22, 2011****Notice of Continuation June 19, 2012****34A-1-302****34A-1-304****63G-4-102 et seq.**

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-4-102 et 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 June 19, 2012

63G-4-102 et seq.

R612. Labor Commission, Industrial Accidents.**R612-1. Workers' Compensation Rules - Procedures.****R612-1-1. Definitions.**

- A. "Commission" means the Labor Commission.
- B. "Division" means the Division of Industrial Accidents within the Labor Commission.
- C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.
- D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.
- E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.
- F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.
- G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.
- H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

- A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 301. The employer must report all injuries, other than first aid administered on site or at an employer sponsored free clinic, to the Industrial Accident Division and to the insurance carrier. First aid treatment is defined as:
- non-prescription medications at non-prescription strength;
 - administering tetanus immunizations;
 - cleaning, flushing, or soaking wounds on the skin surface;
 - using wound coverings, such as bandages, Band Aid (TM), gauze pads, etc., or using SteriStrips (TM) or butterfly bandages;
 - using hot or cold therapy (limited to hot or cold packs, contrast baths and paraffin);
 - using any totally non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.;
 - using temporary immobilization devices while transporting an accident victim (splints, slings, neck collars, or back boards);
 - drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;
 - using eye patches; using simple irrigation or a cotton swab to remove foreign bodies not embedded in or adhered to

the eye;

- using irrigation, tweezers, cotton swab or other simple means to remove splinters or foreign material from areas other than the eye;
 - using finger guards;
 - using massages;
 - drinking fluids to relieve heat stress;
- First aid, as defined above, is limited to a one-time visit and one subsequent follow up visit within a 7 day time period. (This does not apply to reporting it on OSHA's 300 log). However, if first aid treatment is given by a licensed health professional in an employer sponsored free clinic then two subsequent visits within a 14 consecutive day time period are allowed. The employer must maintain the employer's injury report (Form 122) and health records on site for first aid treatment.

First aid, as defined in a through m, does not include any work injuries resulting in:

- loss of consciousness;
- loss of work;
- restriction of work; or
- transfer to another job.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee. This form must be completed when a bill is generated for treatment administered by a licensed health care provider, as defined in 34A-2-11. This form is also to be completed by the health care provider if treatment, beyond first aid, is given at an employer sponsored free clinic. The form must be cosigned by the supervising physician, unless the form is completed by a nurse practitioner.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Suspension of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify

an employee of the suspension of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation is suspended. The insurance carrier or self-insured employer must specify the reason for the suspension of benefits.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident or occupational disease occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

J. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

K. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

L. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

M. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

N. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

O. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

P. "Compensation Agreement - Form 219" - This form is

used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Industrial Accidents for approval.

Q. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

R. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

S. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

T. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

U. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

V. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those

instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X Weekly Benefit \$	X Cumulative Discount	= Discount \$
1		.001475	
10		.008076	
20		.015343	
30		.022538	
40		.029663	
50		.036719	
60		.043706	
70		.050626	
80		.057478	
90		.064264	
100		.070984	
110		.077639	
120		.084229	
130		.090756	
140		.097221	
150		.103623	
160		.109963	
170		.116243	
180		.122463	
190		.128623	
200		.134724	
210		.140767	
220		.146752	
230		.152680	
240		.158552	
250		.164368	
260		.170129	
270		.175835	
280		.181488	
290		.187087	
300		.192633	
312		.199219	

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise

directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;
2. Injury or occupational disease did not occur within the scope of employment;
3. Medical information does not support the claim;
4. Claim was not filed within the statute of limitations;
5. Claimant is not an employee of the employer he/she is making a claim against;
6. Claimant has failed to cooperate in the investigation of the claim;
7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;
8. Tested positive for drugs or alcohol; or
9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but
2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing

benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

- a. Is the claimant engaged in a substantial gainful activity?
- b. Does the claimant have a medically severe impairment?
- c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and

the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1, 1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step - Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

- (i) the requesting party has a substantial possibility of prevailing on the merits;
- (ii) the requesting party will suffer irreparable injury unless a stay is granted; and
- (iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step - Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as

determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

D. For purposes of this rule, the following standards and definitions apply:

1. Other work reasonably available: Subject to medical restrictions and other provisions of the Act and rules, other work is reasonably available to a claimant if such work meets the following criteria:

a. The work is either within the distance that a resident of the claimant's community would consider to be a typical or acceptable commuting distance, or is within the distance the claimant was traveling to work prior to his or her accident;

b. The work is regular, steady, and readily available; and

c. The work provides a gross income at least equivalent to:

(1) The current state average weekly wage, if at the time of the accident the claimant was earning more than the state average weekly wage then in effect; or

(2) The wage the claimant was earning at the time of the accident, if the employee was earning less than the state average weekly wage then in effect.

2. Cooperation: As determined by an administrative law judge, an employee is not entitled to permanent total disability compensation or subsistence benefits unless the employee fully cooperates with any evaluation or reemployment plan. The ALJ will evaluate the cooperation of the employee using, but not limited to, the following factors: attendance, active participation, effort, communication with the plan coordinator, and compliance with the requirements of the vocational plan. In determining if these factors were met, the ALJ shall consider relevant changes in the employee's documents medical condition.

3. Diligent Pursuit: The employer or its insurance carrier shall diligently pursue the reemployment plan. The ALJ will evaluate the employer or insurance carrier's diligent pursuit of the plan using, but not limited to, the following factors: timely payment of expenses and benefits outline in the vocational plan, and as required by the educational institution providing the vocational training, communication with the employee, compliance with the requirements of the vocational plan, and timely modification of the plan as required by documented changes in the employee's medical condition.

4. Resolution of disputes regarding "cooperation" and "diligent pursuit": If a party believes another party is not cooperating with or diligently pursuing either the evaluations necessary to establish a plan, or the requirements of an approved reemployment or rehabilitation plan, the aggrieved party shall submit to the workers' compensation mediation unit an outline of the specific instances of non-cooperation or lack of diligence. Other parties may submit a reply. The Mediation Unit will promptly schedule mediation to reestablish cooperation among the parties necessary to evaluate or comply with the plan. If mediation is unsuccessful, a party may request the Adjudication Division resolve the dispute. The Adjudication Division will conduct a hearing on the matter within 30 days and shall issue a written decision with 10 days thereafter.

R612-1-11. Burial Expenses.

(1) Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to \$8,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

(2) Beginning in the year 2004 and every two years thereafter, the Commission shall review this rule and shall make such adjustments as are necessary so that the burial expense provided by this rule remains equitable when compared to the average cost of burial in this state.

KEY: workers' compensation, time, administrative procedures, filing deadlines

July 2, 2005

Notice of Continuation June 19, 2012

34A-2-101 et seq.

34A-3-101 et seq.

34A-1-104 et seq.

63G-4-102 et seq.

R655. Natural Resources, Water Rights.**R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.****R655-1-1. General Provisions.**

1.1 Authority: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

1.2 Definitions:

(a) "Applicant" means any person submitting an application to the Division of Water Rights to appropriate water, brine or steam for geothermal purposes and for the construction and operation of any well or injection well.

(b) "BOPE" is an abbreviation for Blow-Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow-out.

(c) "Completion." A well is considered to be completed thirty days after drilling operations have ceased unless a suspension of operation is approved by the Division, or thirty days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty-day period or at the end of the suspension.

(d) "Correlative Rights" means the owners' or operators' just and equitable share in the geothermal resource.

(e) "Division" means the Division of Water Rights, Department of Natural Resources, State of Utah.

(f) "Drilling Logs" means the recorded description of the lithologic sequence encountered in drilling a well.

(g) "Drilling Operations" means the actual drilling, re-drilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations.

(h) "Exploratory Well" means a well drilled for the discovery or evaluation of geothermal resources either in an established geothermal field or in unexplored areas.

(i) "Geothermal Area" means the same general land area which in its subsurface is underlaid or reasonably appears to be underlaid by geothermal resources from or in a reservoir, pool, or other source or interrelated sources.

(j) "Geothermal Field" means an area designated by the Division which contains a well or wells capable of commercial production of geothermal resources.

(k) "Geothermal Resource" means the natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(l) "Injection Well" means any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

(m) "Material Medium" means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances.

(n) "Notice" means a statement to the Division that the applicant intends to do work.

(o) "Operator" means any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner.

(p) "Owner" means the owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

(q) "Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated.

(r) "Production Well" means any well which is commercially producing or is intended for commercial production of a geothermal resource.

(s) "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(t) "Suspension of Operations" means the cessation of drilling, re-drilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Division.

(u) "Waste" means any physical waste including, but not limited to:

(1) Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the State.

(2) The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

(v) "Well" means any well drilled for the discovery or production of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources, or any special well, converted producing well or reactivated or converted abandoned well employed for reinjecting geothermal resources or the residue thereof.

1.3 All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by rules for administrative procedures adopted by the Division, including R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights of the State of Utah.

R655-1-2. Drilling.**2.1 Applications:****2.1.1 Application to drill for Geothermal Resources.**

Any person, owner or operator, who proposes to drill a well for the production of geothermal resources or to drill an injection well shall first apply to the Division in accordance with Title 73, Chapter 3. Applications to appropriate water for geothermal purposes will be processed and investigated by the Division, and if they meet the requirements of Section 73-3-8, they will be approved by the State Engineer on a well-to-well

basis or as a group of wells which comprise an operating unit and have like characteristics.

Appropriation of water for geothermal purposes shall not be considered mutually interchangeable with water for any other purpose. Water, brine, steam or condensate produced during a geothermal operation may be subject to further appropriation if physical conditions permit.

2.1.2 Plan of Operations:

Before drilling an exploratory or production well, the applicant shall submit a plan of operations to the State Engineer for his approval. The plan shall include:

- (a) Location, elevation and layout.
- (b) Lease identification and Well Number.
- (c) Tools and equipment description including maximum capacity and depth rating.
- (d) Expected depth and geology.
- (e) Drilling, mud, cementing and casing program.
- (f) BOPE installation and test.
- (g) Logging, coring and testing program.
- (h) Methods for disposal of waste materials.
- (i) Environmental considerations.
- (j) Emergency procedures.
- (k) Other information as the State Engineer may require.

2.1.3 Application to deepen or modify an existing well.

If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Division and written approval must be received prior to beginning work; however, in an emergency, the owner or operator may take action to prevent damage without receiving prior written approval from the Division, but in those cases the owner or operator shall report his action to the Division as soon as possible.

2.1.4 Application for permit to convert to injection.

If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, written request shall be filed with the Division and written approval must be received prior to beginning injection.

2.1.5 Amendment of permit.

No changes in the point of diversion, place or nature of use shall be allowed until an amendment to the application is approved by the State Engineer in accordance with Section 73-3-3.

2.1.6 Notice to other agencies.

Notice of applications, permits, orders, or other actions received or issued by the Division may be given to any other agency or entity which may have information, comments, or interest in the activity involved.

2.2 Fees: Any application filed with the State Engineer shall be accompanied by a filing fee in accordance with Section 73-2-14.

2.3 Bonds:

2.3.1 Any operator having approval to drill, re-enter, test, alter or operate a well, prior to any construction or operation, shall file with the Division of Water Rights and obtain its approval of a surety bond, payable to the Division of Water Rights for not less than \$10,000 for each individual well or \$50,000 for all wells. The bond shall be on a form prescribed by the Division and shall be conditioned on faithful compliance with all statutes and these rules.

2.3.2 Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted.

2.3.3 Transfer of property does not release the bond. If any property is transferred and the principal desires to be released from his bond, the operator shall:

- a. Assign or transfer ownership in the manner prescribed in Sections 73-1-10 and 73-3-18, identifying the right by application number, well number or location and,

- b. Provide the Division with a declaration in writing from the assignee or transferee that he accepts the assignment and tenders his own bond therewith or therein accepts responsibility under his blanket bond on file with the Division.

2.4 Well Spacing:

2.4.1 Any well drilled for the discovery or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the State Engineer upon written request if it can be demonstrated that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

2.4.2 For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity.

2.4.3 The State Engineer shall approve the proposed well spacing programs or prescribe modifications to the programs as he deems necessary for proper development giving consideration to factors as, but not limited to, topographic characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, protecting correlative rights, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment.

2.4.4 Directional drilling.

Where the surface of the parcel of land is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Surface well locations shall not be less than 25 feet from the outer boundary of the parcel on which it is located, nor less than 25 feet from an existing street or road. The production or injection interval of the well shall not be less than 100 feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Division for all wells directionally drilled.

2.5 Identification: Each well being drilled or drilled and not abandoned shall be identified by a durable sign posted in a conspicuous place near the well. The lettering shall be large enough to be legible at 50 feet under normal conditions and shall show the name of the applicant, well number, location by 10-acre tract, and name of lease.

The well number shall be according to the modified Kettleman Well Numbering System adopted by the U.S. Geological Survey.

2.6 Unit Agreements: At the request of any interested party or on his own initiative, the State Engineer may establish a unit plan or agreement for a geothermal area to prevent waste, protect correlative rights and avoid drilling unnecessary wells. Proper notice to interested parties must be given and a hearing held before the State Engineer before the unit may be created.

2.7 Casing Requirements:

2.7.1 General.

All wells shall be cased in a manner to protect or minimize damage to the environment, usable ground waters and surface waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface.

Specifications for casing strings shall be determined or approved on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements given are general but should be used as guidelines in submitting proposals to drill.

2.7.2 Conductor Casing.

A minimum of 40 feet of conductor casing shall be installed. The annular space is to be cemented solid to the surface. A 24-hour cure period for the grout must be allowed prior to drilling out the shoe unless additives approved by the State Engineer are used to obtain early strength. An annular blowout preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Division. For low-temperature geothermal wells less than 90 degrees C. this requirement may be reduced or waived by the State Engineer.

2.7.3 Surface Casing.

Except in the case of low-temperature geothermal wells, the surface casing hole shall be logged with an induction electrical log, or equivalent, before running casing or by gamma-neutron log. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the State Engineer may not require additional logging of the surface casing hole. However, permission to omit this requirement must be granted by the Division prior to running surface casing.

Surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be cemented solid to the surface. A 24-hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives approved by the State Engineer are used to obtain early strength.

2.7.3.1 Length of Surface Casing.

(a) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth of wells drilled in those areas. A minimum of surface casing shall be set through a sufficient series of low permeability, competent lithologic units to ensure a solid anchor for blowout-prevention equipment and to protect usable ground water and surface water from contamination. A second string or intermediate casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing geothermal gradient or rapidly increasing formation pressures are encountered.

(b) In areas of known high formation pressure, surface casing shall be set at a depth approved by the Division after a careful study of geological conditions.

(c) Within the confines of designated geothermal fields, the depth to which surface casing shall be set shall be approved by the Division on the basis of known field conditions.

(d) These requirements may be reduced or waived by the State Engineer for low-temperature geothermal wells.

2.7.3.2 Mud Return Temperatures.

The temperature of the return mud shall be monitored regularly during the drilling of the surface casing hole. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperature shall be logged after each joint of pipe has been drilled down 30 feet.

2.7.3.3 Blowout-Prevention Equipment.

BOPE capable of shutting-in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be witnessed by Division personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and witness BOPE pressure tests on all other wells shall be made on a well-to-well basis. The Division must be contacted 24 hours in advance of a scheduled pressure test. The State Engineer may give verbal permission to proceed with the test upon request by the operator.

2.7.4 Intermediate Casing.

Intermediate casing shall be required for protection against

unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface or to the top of the liner hanger whenever the intermediate casing string is run as a liner. The liner lap shall be pressure tested prior to resumption of drilling.

2.7.5 Production Casing.

Production casing may be set above or through the producing or injection zone and cemented above the injection zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain usable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least 100 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity.

2.8 Electric Logging:

All wells, except observation wells for monitoring purposes only, shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Division upon written request if such request demonstrates sufficient existing data of surrounding wells.

R655-1.3. Blowout Prevention.

3.1 General.

3.1.1 Blowout-Prevention Equipment (BOPE) installations shall include high temperature-rated packing units and ram rubbers, if available, and shall have a minimum working-pressure rating equal to or greater than the lesser of:

(a) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot.

(b) A pressure equal to the rated burst pressure of the BOPE anchor string.

(c) A pressure equal to 2,000 psi.

Specific inspections and tests of the BOPE may be made by the Division. The requirements for tests will be included in the Division's answer to the notice of the intention to drill.

3.1.2 A Division employee may be present at the well at any time during the drilling.

3.1.3 A logging unit equipped to regularly record the following data shall be installed and operated continuously after drilling out the shoe of the conductor pipe and until the well has been drilled to the total depth.

(a) Drilling mud temperature.

(b) Drilling mud pit level.

(c) Drilling mud pump volume.

(d) Drilling mud weight.

(e) Drilling rate.

(f) Hydrogen sulfide gas volume.

The Division may waive the requirement for installation of a logging unit on evidence that the owner or operator has engaged a qualified mud engineer to monitor, log and record the data specified in the above subparagraphs a. through d. The drilling rate required in subparagraph e. shall be logged with standard industry recording devices, and hydrogen sulfide monitoring and safety equipment shall be provided whenever needed to satisfy the requirement of subparagraph f.

3.2 Requirements Using Mud as the Drilling Fluid.

The following requirements are for exploratory areas, unstable areas containing fumaroles, geysers, hot springs, mud pots, and for fields with a history of lost circulation, a blowout, or zone pressures less than 1000 psi. These requirements may be reduced by the State Engineer where the geothermal formations are known to be shallow and of low pressure and temperature.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working pressure rating of 2,000 psi shall be installed on the surface casing so that the well can be shut-in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary back-up system. This total system shall be equipped with dual controls: one at the driller's station and one at least 50 feet away from the well head.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that required of the BOPE.

(i) The temperature of the return mud during the drilling of the surface casing hole shall be monitored regularly. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperatures shall be logged after each joint of pipe is drilled down every 30 feet.

3.3 Requirements Using Air as the Drilling Fluid.

The following requirements are for areas where it is known that dry steam exists at depth or formation pressures are less than hydrostatic:

(a) A rotating-head installed at the top of the BOPE stack.

(b) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in at any time.

(c) A banjo-box or mud-cross steam diversion unit installed below the double-ram BOPE fitted with a muffler capable of lowering sound emissions to within State standards.

(d) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box or mud-cross so that the well can be shut-in while removing the rotating-head during bit changes.

(e) A master gate valve, with a minimum working-pressure rating of 600 psi, installed below the blind-ram so that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack.

(f) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(g) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the well head.

(h) Float and standpipe valves.

(i) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(j) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi.

R655-1-4. Records.

4.1 General: The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator

regarding the well shall be subject to the inspection by the Division during business hours. All records, unless otherwise specified, must be filed with the Division within 90 days after completion of the well.

4.2 Records to be Filed with the Division:

4.2.1 Drilling Logs and Core Record -- the drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined.

4.2.2 Well History -- the history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well.

4.2.3 Well Summary Report -- the well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done.

4.2.4 Production Records -- the owner or operator of any well producing geothermal resources shall file with the Division on or before the tenth day of each month for the preceding month, a statement of production utilized in a form as the Division may designate.

4.2.5 Injection Records -- the owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Division on or before the tenth day of each month for the preceding month a report of the injection as the Division may designate.

4.2.6 Electric Logs and Directional Surveys if Conducted -- electric logs and directional surveys shall be filed upon recompletion of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Division may extend the time within which to comply for a period not to exceed one year.

4.3 Confidential Status: Any reports, logs, records, or histories filed with the Division shall not be available for public inspection and shall be kept confidential by the Division unless agreed to by the owner, provided, however, that the Division may use any reports, logs, records, or histories in any action in any court to enforce the provisions of Title 73, Chapter 22, or any order adopted hereunder. The following information may be made public by the Division:

(a) Owner or operator's name.

(b) Well designation or number.

(c) Elevation of derrick floor or ground elevation.

(d) Location of well.

(e) The application and all information pertaining to it, including its current status.

4.4 Inspection of Records: The records filed by an operator with the Division shall be open to inspection only to those authorized in writing by the operator and to designated Division personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of new owner or lessee.

R655-1-5. Injection Wells.

5.1 Construction: The owner or operator of a proposed injection well or series of injection wells shall provide the Division with information it deems necessary for evaluation of the impact of injection on the geothermal reservoir and other natural resources. Information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected

and of the fluid from the intended zone of the injection, if available.

5.2 Surveillance:

5.2.1 When an operator or owner proposes to drill or modify an injection well or convert a well to an injection well, he shall be required to demonstrate to the Division by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Division.

5.2.2 To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, surveys shall be made at least every two years or more often if necessary. The Division shall be notified 48 hours in advance of surveys in order that a representative may be present if deemed necessary. If the operator can substantiate by existing data that these tests are not necessary, then, after review of the data, the State Engineer may grant a waiver exempting the operator from the tests.

5.2.3 After a well has been placed into injection, the injection well site will be visited periodically by Division personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the State Engineer, this work must be performed within ninety days of approval for the injection well, or approval for the injection well issued by the Division will be rescinded.

R655-1-6. Abandonment and Sealing.

6.1 Objectives: The objectives of abandonment are to block interzonal migration of fluids so as to:

(a) Prevent contamination of fresh waters or other natural resources.

(b) Prevent damage to geothermal reservoirs.

(c) Prevent loss of reservoir energy.

(d) Protect life, health, environment and property.

6.2 General Requirements: The following are general requirements which are subject to review and modification for individual wells or field conditions:

(a) A notice of intent to abandon geothermal resource wells is required to be filed with the Division five days prior to beginning abandonment procedures. A permit to abandon may be given orally by the State Engineer provided the operator submits a written request for abandonment within 24 hours of the oral request.

(b) A history of geothermal resource wells shall be filed within sixty days after completion of abandonment procedures.

(c) All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Monument shall consist of a four-inch diameter pipe 10 feet in length of which four feet shall be above ground. The remainder shall be imbedded in concrete. The applicant's name, application number, and location of the well shall be shown on the monument. An abandoned well on tilled land shall be marked in a manner approved by the State Engineer.

(d) Good quality, heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with grout.

(e) All grout plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing.

(f) All open annuli shall be filled solid with grout to the surface.

(g) A minimum of 100 feet of grout shall be emplaced straddling the interface or transition zone at the base of ground water aquifers.

(h) One hundred feet of grout shall straddle the placement of the shoe plug on all casings including conductor pipe.

(i) A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least 50 feet below the top of the casing.

(j) All casing shall be cut off at least five feet below land surface.

(k) Grout plugs shall extend at least 50 feet over the top of any liner installed in the well.

(l) Injection wells are required to be abandoned in the same manner as other wells.

(m) Other abandonment procedures may be approved by the Division if the owner or operator can demonstrate that the geothermal resource, ground waters, and other natural resources will be protected. Approval must be given in writing prior to the beginning of any abandonment procedures.

(n) Within five days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Division on all work done with respect to the abandonment.

R655-1-7. Maintenance.

7.1 General: All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources.

7.2 Corrosion: All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources.

7.3 Tests: The Division may require tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Tests may include, but are not limited to, casing tests, cementing tests, and equipment tests.

R655-1-8. Temperature Gradient Wells.

8.1 General: Wells may be drilled upon approval of the State Engineer for measurement of subsurface temperatures and conductive heat flow.

8.2 Information: Request for a temperature gradient well program shall include the following information:

(a) Well number.

(b) Well location, elevation and expected depth.

(c) Geologic interpretation of area under investigation, including any known or inferred temperature data.

(d) Proposed drilling program, including method and casing schedule.

(e) Proposed method of abandonment.

(f) The State Engineer may require other data and impose restrictions or supervision by the Division as his studies may indicate.

8.3 Conditions: The following general conditions shall apply to temperature gradient wells:

(a) The depth of the hole shall not exceed 500 feet unless otherwise authorized by the State Engineer.

(b) The wells are to be cased and sealed against the water in the formations to be drilled.

(c) Return mud or air temperatures shall be monitored at, at least 30 foot intervals and should the temperature reach 125 degrees F. the drilling shall cease and the casing installed or the hole abandoned. Plastic casing may be used at temperatures under 125 degrees F.; otherwise, steel casing shall be used.

(d) Upon completion of the testing program, the casings are to be capped, or the casings are to be pulled and the holes cemented from bottom to top.

(e) The driller must be bonded and have a current well driller's permit from the State Engineer. Before starting, he

must give this Division notice of the day he will begin drilling.

(f) Temperature data and logs of each hole surveyed are to be submitted to the State Engineer. These will be held in confidential status until released by the owner.

(g) The driller shall exercise due caution in all drilling operations to prevent blowouts, explosions or fires.

R655-1-9. Environment.

9.1 General: The owner shall conduct exploration and development operations in a manner that provides maximum protection of the environment; rehabilitate disturbed lands; take all necessary precautions to protect the public health and safety; and conduct operations in accordance with the spirit and objectives of all applicable environmental legislation, and executive orders.

Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of applicable Federal, State, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards due to operations of the lessee, after notification, may be construed as grounds for the State Engineer to order a suspension of operations.

R655-1-10. Penalties.

As stated in Section 73-22-10, any willful violation of or failure to comply with any provision of these rules shall be a misdemeanor and each day that the violation continues shall constitute a separate offense.

**KEY: geothermal resources
1992**

73-22

Notice of Continuation June 15, 2012

R655. Natural Resources, Water Rights.**R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.****R655-2-1. General Provisions.**

1.1 Procedure Governed. These rules shall govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings commenced prior to January 1, 1988. Adjudicative proceedings commenced on and after January 1, 1988, are governed by R655-6 of these rules.

1.2 Definitions.

(a) "Division" means Division of Water Rights.
 (b) "State Engineer" is the Administrator of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(c) "Staff" means the Division of Water Rights staff.

(d) "Hearing officer" is the individual conducting a hearing which is provided for in these rules and will be either the State Engineer or a designated member of his staff.

(e) "Application" means any application which has been filed pursuant to Title 73, Chapters 1 through 3, and shall include -- but not be limited to -- applications to appropriate, change applications, requests for extension of time, exchange applications, segregation applications, applications to resume the use of water, and applications for stream channel changes. The rules governing the filing and perfecting of these documents are specified in said Chapters, and the following rules govern only the hearing procedures for those applications which have been properly filed and have proceeded to the point that they are ready for hearing.

(f) "Applicant" is a person applying for an application.

(g) "Petitioner" is any person, other than the applicant, seeking relief from the State Engineer where the relief sought falls within the jurisdiction of the State Engineer's statutory duties and responsibilities.

(h) "Protestant" means a person who protests an application before the State Engineer.

(i) "Person" means any governmental subdivision or agency, individual, corporation, partnership or association.

(j) "Proceeding" shall include -- but not be limited to -- hearings, petitions, orders to show cause, and formal investigations made by the State Engineer.

(k) "Party" means each person named or admitted as a party in a proceedings before the State Engineer.

(l) "Water user" means any person using water and subject to the regulatory authority of the State Engineer.

1.3 Liberal Construction. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the State Engineer.

1.4 Deviation from Rules. During emergency situations where it is essential to restore or establish water for the preservation of life or critical crops, the State Engineer may permit a deviation from these rules except where precluded by statute.

1.5 Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor State holiday. For good cause shown, the State Engineer may extend or waive any time limit prescribed or allowed by these rules.

1.6 Notice. The State Engineer shall give written notice of hearings to all persons who have become parties to a proceeding, by regular mail at least ten days prior to the hearing.

R655-2-2. Parties.

2.1 Generally. Parties to a proceeding before the State Engineer shall be:

(a) Persons who have a statutory right to be a party;

(b) Persons who may become a party when they have established to the satisfaction of the State Engineer that they have a substantial interest in the subject matter of the proceeding and that their intervention will not unduly broaden the issues.

2.2 Rights of Parties. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R655-2-3. Intervention.

3.1 Order Granting Leave to Intervene Required. Persons desiring to intervene in a proceeding shall obtain permission from the State Engineer granting leave to intervene before being allowed to participate. Permission shall be requested by means of a petition in the following manner, provided that for good cause shown leave to intervene may be requested orally at the hearing.

(a) Content of Petition. Petitions for leave to intervene must be in writing and must identify the proceeding by water right number, if known. The petition must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding and the manner in which the proceeding will affect his interests.

(b) When Petition Must be Filed. A petition for leave to intervene must be filed with the State Engineer at least five days prior to the date set for the hearing.

(c) Granting of Petition. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding and does not unduly broaden the issues, the State Engineer may grant leave to intervene.

R655-2-4. Pleadings.

4.1 Pleadings before the State Engineer for administrative hearings shall consist of:

(a) Applications.

For purposes of a hearing before the State Engineer, applications which have been filed with the State Engineer in accordance with the provisions of Title 73, Chapters 1 through 3, and which have been protested, shall be deemed pleadings for purposes of the administrative hearing procedure provided for in these rules.

(b) Formal Protests.

Formal protests shall consist of those protests which have been filed with the State Engineer in objection to the granting of an application. The provisions for filing formal protests and the time within which they must be filed is provided in Section 73-3-7. The formal protest shall set forth clearly and concisely the grounds for the protest. Two or more grounds of protest concerning the same application may be included in one formal protest, but should be numbered and stated separately. Two or more protestants may join in one formal protest if their respective protests are against the same application and deal substantially with the same issue.

(c) Informal Protests.

Informal protests may be made by a letter or other writing, and no particular form is required. The writing must clearly state the matters complained of and must identify the party complained against and must be signed by the protestant or his attorney and show the address of protestant or his attorney.

Informal protests may be handled by the State Engineer by informal conference, correspondence, or otherwise with the parties affected in an endeavor to bring about adjustment of the protest without a formal hearing.

(d) Orders to Show Cause or Other Notice.

Pleadings before the State Engineer shall also include

Orders to Show Cause or other notices used by the State Engineer to initiate a hearing on his own motion.

(e) Petitions.

All pleadings other than applications requesting affirmative relief, including requests to intervene or for re-hearing, shall be entitled "petitions". A petition shall set forth clearly and concisely the basis and grounds for the petition and the relief requested.

(f) Title and Content of Pleadings.

Applications and other similar documents must only be filed upon the forms provided by the State Engineer. All other pleadings filed with the State Engineer should include the water right number as it appears in the State Engineer's office, if the water right which is the subject matter of the pleading has been assigned a number by the State Engineer. The pleading should also identify the name and address of the water user against whom the protest is directed.

If the water right involved in the pleading has not been assigned a water right number by the State Engineer, then the protestant or petitioner should identify the water right involved by other means -- the name and address of the water user, the water source, nature and location of the use, and other information as will aid in the identification of the water right.

Protests and petitions should be filed on legal-sized paper, type-written and double-spaced, but may be submitted in hand-written form. Protests and petitions should identify the water right by number and should contain a clear, concise statement of the matter relied upon as the basis for the pleading, together with an appropriate request for relief when relief is sought.

(g) Signing of Pleadings.

Pleadings shall be signed by the party or by the party's attorney or other authorized representative, and shall show the signer's address. The signature shall be deemed to be a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, the statements are true.

(h) Amendments to Pleadings.

The State Engineer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R655-2-5. Filing and Service.

5.1 Filing of Pleadings. Applications and protests shall be filed in accordance with the applicable statutory provisions. Petitions shall be filed with the State Engineer as specified in these rules.

5.2 Service. The State Engineer, upon receipt of a protest or petition, shall mail copies to those parties against whom relief is sought.

5.3 Service on Attorney. When any party has appeared by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party he represents.

5.4 Time for Filing. Protests and other documents which are governed by statute shall be filed in accordance with the time specified in the statute. Other pleadings which are provided for in these rules shall be filed within the time specified.

R655-2-6. Appearances and Representation.

6.1 Taking Appearances. Parties shall enter their appearances at the beginning of a hearing or at a time designated by the State Engineer by giving their names and addresses and stating their positions or interests in the proceeding.

6.2 Representation of Parties.

(a) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or

governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(b) Any party may be represented by an attorney at law.

R655-2-7. Pre-Hearing Procedure.

The State Engineer may, upon written notice to all parties or record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement.

R655-2-8. Hearings.

8.1 Initiation of Formal Hearing in Contested Cases.

(a) By the State Engineer. The State Engineer may initiate a formal hearing upon his own motion to determine matters within his authority. If the hearing is directed toward an applicant or water user, the State Engineer shall serve on that person an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the person is charged, or the issues to be determined at the hearing. The notice or order shall specify the statutes and rules involved in the proceeding.

(b) By Other Persons. A formal hearing may be initiated by other persons by filing with the State Engineer a formal protest or petition. Upon the filing of a formal protest or petition which is directed toward an applicant or water user, the State Engineer shall serve a copy of the formal protest or petition upon the applicant or water user, except as provided in the following sub-paragraphs (c) and (d) of this rule.

(c) Dismissal of Formal Protest or Petition. If it appears to the State Engineer upon the filing of a formal protest or petition that the matters alleged in the formal protest or petition are not within his jurisdiction or regulatory powers, the State Engineer in his discretion need not serve a copy of the formal protest or petition on the applicant or water user, but shall serve a notice on the protestant or petitioner which shall state the reasons why the formal protest or petition has not been served, and shall set a time at which the protestant or petitioner may appear before the State Engineer or submit a written memorandum setting forth reasons why the State Engineer has jurisdiction and authority to resolve the matter. Following appearance or submission of memorandum, the State Engineer may proceed to serve the formal protest or petition on the applicant or water user, or may -- upon his own motion -- dismiss the formal protest or petition if he concludes that he does not have jurisdiction over or the authority to resolve the matter. The State Engineer shall mail a written notice to the protestant or petitioner of his action, and, if he dismisses the formal protest or petition, the notice shall contain a statement of the reasons for his decision. If the State Engineer proceeds to serve the protestant or petitioner, no action taken pursuant to this paragraph shall preclude the applicant or water user from challenging the jurisdiction and authority of the State Engineer over the matter in issue.

(d) Protest or Petition Insufficient. If a formal protest or petition filed with the State Engineer does not contain sufficient information in the opinion of the State Engineer to adequately apprise the applicant or water user of the matters which are complained of and to enable the applicant or water user to prepare his defense, the State Engineer may require the protestant or petitioner to furnish additional information, or to file a new protest or petition before the formal protest or petition is served on the applicant or water user.

8.2 Setting of Hearing. Upon the filing of a formal protest or petition which does not require a responsive pleading, or when the State Engineer initiates a proceeding upon his own

motion and no responsive pleading is required, the State Engineer shall set a time and place for hearing. No hearing shall take place within the ten-day period immediately following the filing of the formal protest or petition unless the parties consent to a shorter period of time. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

8.3 Failure to Appear. When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the State Engineer may dismiss or continue the matter, or may proceed to hear the matter in the absence of the defaulting party.

8.4 Continuance. If application is made to the State Engineer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the State Engineer may grant a continuance of the hearing.

8.5 Hearings. All hearings held by the State Engineer shall be open to the public.

8.6 Testimony. At a hearing, the State Engineer or his hearing officer shall accept oral or written testimony from any party. Further, the hearing officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings before the State Engineer may be under oath.

8.7 Order of Presentation of Evidence. Unless otherwise directed by the State Engineer at a hearing, the presentation of evidence shall be as follows:

(a) Upon applications and other documents filed in connection with the appropriation and use of water:

1. applicant;
2. protestants.

(b) Upon petitions or objections concerning the exercise of a water right:

1. protestants;
2. water user whose use is being protested.

(c) Upon complaints by the State Engineer and orders to show cause --

1. Division of Water Rights staff;
2. party against whom the action is being taken.

During any of the hearings specified above, a party may offer rebuttal evidence.

8.8 Rules of Evidence. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in a judicial proceeding. The hearing officer shall admit all relevant and material evidence, except evidence which is unduly repetitious, even though evidence may be inadmissible under rules of evidence in judicial proceedings. The weight to be given to evidence shall be determined by the State Engineer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

8.9 Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

8.10 Official Notice. The State Engineer may take official notice of the following matters:

(a) Rules, regulations, official reports, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

(b) Official documents introduced into the record by proper reference; provided, however, that documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(c) Matters of common knowledge and generally

recognized technical or scientific facts within the State Engineer's specialized knowledge and of any factual information which he may have gathered from a field inspection of the water sources or area involved in the proceeding.

8.11 Oral Argument and Memoranda. Upon the conclusion of the taking of evidence, the State Engineer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the State Engineer.

8.12 Record of Hearing. A record of any hearing may be made at the option of either the State Engineer or any party to the hearing. However, should a party desire a record of any hearing, that party must notify the State Engineer within a reasonable time prior to the time the hearing begins. When a record is made by the State Engineer, it shall be done by means of an automatic recording device. If the tape of the hearing is later transcribed, the transcript will be made available for inspection by any party. The State Engineer will make a transcription only if he deems it advisable and necessary to do so.

If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the State Engineer free of charge. This transcript shall be available at the State Engineer's office to any party to the hearing.

R655-2-9. Decisions and Orders.

9.1 Report and Order. After the State Engineer has reached a final decision upon any proceeding, he shall make and enter a decision containing his findings of fact and conclusions and order.

9.2 Service of Decisions. A copy of the decision shall be served on the parties of record or their representatives by regular mail.

9.3 Judicial Review of State Engineer's Decision. Any person aggrieved by a decision of the State Engineer may, within 60 days after notice thereof, bring a civil action in the district court for a plenary review thereof in accordance with Sections 73-3-14 and -15.

R655-2-10. Re-Hearings.

10.1 Time for Filing. A petition for re-hearing must be filed within 20 days after notice of a written order or decision of the State Engineer.

10.2 Contents of Petition. A petition for re-hearing shall set forth specifically the grounds upon which the petitioner considers the order or decision of the State Engineer to be in error.

10.3 Action on the Petition. Upon the filing of a petition for re-hearing, the State Engineer may set a time for hearing the petition or may summarily grant or deny the petition in whole or in part.

10.4 Re-Hearings Limited. If an order is made granting the petition for re-hearing, it shall be limited to the matter specified in the order. Upon re-hearing, the State Engineer may affirm his former decision or may abrogate it, change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the State Engineer.

R655-2-11. Declaratory Rulings.

Any interested person may petition the State Engineer for a declaratory ruling on the applicability of any decision, rule, regulation, or statutory provision relating to the State Engineer. The petition will be in the same form as other petitions and will set forth in detail the specific facts for which the ruling is requested and the manner in which the petitioner claims the

rule, regulation, decision or statutory provision may affect him. If the petition sets forth information which requires the issuance of a ruling, the State Engineer shall set the matter down for hearing as in other cases.

The State Engineer may in his discretion decline to issue declaratory rulings where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing a ruling.

KEY: water rights procedures

1992

Notice of Continuation June 15, 2012

73-3

63G-4-203

R655. Natural Resources, Water Rights.**R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.****R655-6-1. Authority and Effective Date.**

A. These rules establish and govern the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63G-4-203.

B. These rules govern all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by R655-2.

R655-6-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Rights are hereby designated as informal proceedings and include, but are not limited to, all requests for agency action and notices of agency action concerning applications to appropriate water, change applications, exchange applications, applications to segregate; requests for reinstatement and extension of time; proofs of appropriation and change; applications for extension of time within which to resume use of water and proofs of resumption of use; applications to renovate or replace existing wells; permits and authorizations for dam construction, repair and use; applications and other procedures for utilization of geothermal resources; licenses and other permits for water well drillers; applications for stream alteration; and other adjudicative proceedings involving water right administration.

R655-6-3. Definitions.

A. "Adjudicative Proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63G, Chapter 4 shall not be included within this definition.

B. "Division" means the Division of Water Rights.

C. "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

D. "Staff" means the Division of Water Rights staff.

E. "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 other agency.

F. "Party" means the Division or other person commencing an adjudicative proceeding, all respondents, all protestants, all persons permitted by the Presiding Officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

G. "Presiding Officer" means the State Engineer, or an individual or body of individuals designated by the State Engineer, designated by the agency's rules, or designated by statute to conduct a particular adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division or any other person.

I. "Application" means any application which has been filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6, and shall include, but not be limited to, applications enumerated in R655-6-5.B.3. An application is also a request for agency action. The substantive rules governing the filing and perfecting of these documents are specified in the above Chapters and in other Division rules, and R655-6 governs only the administrative procedures for those applications which have been properly filed.

J. "Applicant" is a person applying for an application.

K. "Protestant" means a person who timely protests an application before the State Engineer pursuant to Section 73-3-7 or who files a protest pursuant to Section 73-3-13.

R655-6-4. Construction.

A. These rules shall be construed in accordance with Title 63G, Chapter 4, and these rules supersede any conflicting provision of procedural rules promulgated by the Division.

B. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division.

C. 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 State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

D. Any pleading or other document required to be filed with the Division shall be considered to be filed on the date the signed original is actually deposited with the Division and not on the date of postmark.

R655-6-5. Commencement of Proceedings.

A. Proceedings Commenced by the Division.

1. All informal adjudicative proceedings commenced by the Division shall be initiated by a notice of agency action as provided by applicable statute, Division policies, and Subsection 63G-4-201(2).

2. The Presiding Officer may require the person against whom the agency action is commenced to file a response within 30 days of the mailing or publication date of the notice of agency action.

B. Proceedings Commenced by Persons Other Than the Division.

1. All informal adjudicative proceedings commenced by persons other than the Division shall be commenced by either completing and submitting prepared forms requesting agency action which are available at the Division or, if no forms are required to initiate a particular proceeding, by submitting in writing a request for agency action which shall include at least the following:

- a. the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- b. the Division's file number or other reference number, if known;
- c. the date that the request for agency action was mailed;
- d. a statement of the legal authority and jurisdiction under which agency action is requested;
- e. a statement of the relief or action sought from the Division;
- f. a statement of the facts and reasons forming the basis for relief or agency action;
- g. the name, address and telephone number of the person requesting agency action;
- h. the signature of the person requesting agency action;

and

i. any filing fees required by statute.

2. For purposes of requests for agency action filed pursuant to Title 73, the adjudicative proceeding commences on the date the request is received by the Division and not on the date of postmark.

3. Forms Requesting Agency Action

The following forms requesting agency action shall be used by persons requesting a particular agency action and are available from the Division:

- a. Application to Appropriate Water
- b. Temporary Application to Appropriate Water

- c. Application for Permanent Change of Water
 - d. Application for Temporary Change of Water
 - e. Application to Segregate a Water Right
 - f. Request for Reinstatement and Extension of Time
 - (i) Before Fourteen Years
 - (ii) After Fourteen Years
 - g. Proof of Appropriation of Water
 - h. Proof of Permanent Change of Water
 - i. Application for Exchange of Water
 - j. Application for Extension of Time Within Which to Resume Use of Water
 - k. Proof of Resumption of Use of Water
 - l. Application to Renovate or Replace an Existing Well
 - m. Application to Construct a Dam Impounding Less Than 20 Acre-Feet
 - n. Application for Well Driller's License
 - o. Permit Application to Alter a Natural Channel
4. Upon receipt of a request for agency action, the Presiding Officer shall promptly review the request and shall act in accordance with Subsections 63G-4-201(3)(d) and (e).
5. Protests filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6 shall be filed in accordance with the governing statutes and these rules.

a. Protests should be filed on letter-sized paper, typewritten and double-spaced, but may be submitted in legible handwritten form. Protests should identify the water right by water right number, state the complete mailing address of the protestant, and should contain a clear, concise statement of the matter relied upon as the basis for the protest, together with an appropriate request for relief. If the name or address of the protestant is not legible, the Division shall not be obligated to give the protestant notice of any further proceedings.

b. Protests signed by more than one person shall be accepted. However, persons filing a multiple-person protest are encouraged to designate a representative for the group of protestants who shall receive all notices on behalf of all who signed the protest. If no representative is designated, each person signing the protest shall be considered a protestant, and shall receive notice of any further proceedings, if their name, mailing address and phone number are clearly legible.

c. Upon the filing of a protest the Presiding Officer shall mail a copy of the protest to the applicant. The applicant may file with the Division an answer to the protest within the time designated by the Presiding Officer. The Presiding Officer shall mail copies of any answer to the protestant, or attorney or authorized representative, if any. The protestant may file a response to the answer with the Division within the time designated by the Presiding Officer. The Presiding Officer shall mail a copy of the response to the applicant.

d. Protests filed after the protest period has expired shall be placed on file and become part of the record. Any person filing a late protest is not a party and may receive notice of any further proceeding, hearing or order.

R655-6-6. Pleadings.

A. Pleadings before the Presiding Officer for administrative hearings may consist of a notice of agency action, a request for agency action, responses, protests, answers to protests, responses to answers, motions together with affidavits, briefs, memoranda of law and fact in support thereof, requests for reconsideration, and other pleadings as allowed by Title 63G, Chapter 4.

B. Motions may be submitted for the Presiding Officer's decision on either written or oral argument, and the filing of affidavits in support or contravention thereof may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

C. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended

or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

D. Service of Pleadings.

Except as otherwise specified in R655-6-5.B.5.c., all persons filing pleadings after the request for agency action or the notice of agency action have been filed shall serve copies of the pleadings by regular mail to all parties or their attorney of record or authorized representative on the date of filing the pleadings with the Division. Service upon any attorney or authorized representative constitutes service on the represented party. Service shall be deemed complete on the date of mailing.

E. Post-Hearing Pleadings.

Before or after a hearing is concluded, any party may seek permission from, or may be asked by, the Presiding Officer to file a memorandum or other information. All other parties shall have 20 days, unless shortened or lengthened by the Presiding Officer, from the date of service within which to file responsive pleadings. The filing of any further post-hearing pleadings shall be by permission of the Presiding Officer.

R655-6-7. Hearings.

A. The Division shall hold a hearing if a hearing is required by statute or rule.

B. The Division shall hold a hearing if a hearing is permitted by rule and is requested by a party in writing within 10 days of when the adjudicative proceeding commences, or within the time prescribed in the notice of agency action or by the Presiding Officer.

C. The Division may hold a hearing if a hearing is requested in a timely filed protest.

D. The Division may at its discretion hold a hearing on any adjudicative proceeding to determine matters within its authority.

E. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

F. Hearings shall be held for most adjudicative proceedings in the county where the water source is located or the county where the majority of the parties reside. Hearings may be held outside the county at the discretion of the state engineer.

G. If no hearing is held for a particular adjudicative proceeding, the Division shall within a reasonable time issue a decision pursuant to R655-6-16.

R655-6-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R655-6-9. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of identifying and simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R655-6-10. 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 continuance of the hearing.

R655-6-11. Parties to a Hearing.

A. All hearings shall be open to all parties and all parties shall be entitled to introduce evidence, examine and cross-

examine witnesses, make arguments, and fully participate in the proceeding.

B. Any person not a party to the adjudicative proceeding may participate at a hearing as a witness for a party or, upon the consent of the Presiding Officer, may participate as part of the Division's investigative and fact finding powers. Such a person is not a party to the adjudicative proceeding and may not seek judicial review.

R655-6-12. Appearances and Representation.

A. Taking Appearances.

Parties shall enter their appearances at the beginning of a hearing or at a time designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties.

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

2. Any party may be represented by an attorney at law.

R655-6-13. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer at his discretion may continue the matter, or may enter an order of default as provided by Section 63G-4-209, or may proceed to hear the matter in the absence of the defaulting party.

R655-6-14. Discovery, Testimony, Evidence and Argument.

A. Discovery is prohibited but the Division may issue subpoenas or other orders to compel production of necessary evidence.

B. All parties shall have access to non-confidential and non-privileged information contained in the Division's files of public record, and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony.

At the hearing, the Presiding Officer shall accept oral or written testimony from any party or witness. Further, the Presiding Officer shall have the right to question and examine any party or witnesses called to present testimony at a hearing. The testimony and statements received at hearings may be under oath.

D. Order of Presentation of Evidence.

Unless otherwise directed by the Presiding Officer at a hearing, the evidence shall be presented first by the party commencing the adjudicative proceeding. Each party may offer rebuttal evidence.

E. Rules of Evidence.

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may not be excluded solely because it is hearsay.

F. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

G. Official Notice.

The Presiding Officer may take official notice of the following matters which shall be considered as facts presented at the hearing:

1. Rules, regulations, official and unofficial reports,

surveys, maps, investigations, all Division files, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

2. Official documents introduced into the record by proper reference; provided, however, documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally recognized technical or scientific facts within the Division's specialized knowledge, and any factual information which the Division may have gathered from a field inspection of the water sources or area involved in the proceeding.

H. Oral Argument and Memoranda.

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R655-6-15. Record of Hearing.

A. A record of any hearing may be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R655-6-16. Orders.

A. After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files or records and on the facts presented in evidence at any hearings.

B. The signed order described in this section or an order issued in response to a timely-filed request for reconsideration shall constitute the final agency action.

C. A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R655-6-17. Requests for Reconsideration.

A. Who may file.

Any aggrieved party may file a Request for Reconsideration by following the procedures of Section 63G-4-302. A Request for Reconsideration is not a prerequisite for judicial review.

B. Action on the Request.

Upon the filing of a Request for Reconsideration, the Division shall review the Request and may within 20 days do any or all of the following:

1. issue any preliminary order;
2. summarily deny the Request in whole or in part;
3. summarily grant the relief requested in whole or in part;

or

4. set a time for a re-hearing.

C. If the Division does not issue an order within 20 days, the Request shall be considered to be denied.

D. Re-Hearings Limited.

If an order is made granting a rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the Presiding Officer may affirm his former decision or may abrogate it, or may change or modify the same in any particular.

That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the Presiding Officer.

R655-6-18. Judicial Review.

A. Any party aggrieved by an order of the State Engineer may obtain judicial review by following the procedures and requirements of Sections 63G-4-401 and -402 and 73-3-14 and -15.

B. The Division may grant a stay of its order or other temporary remedy during the pendency of judicial review on its own motion, or upon petition of a party pursuant to the provisions of Section 63G-4-405.

R655-6-19. Declaratory Orders.

Any interested person may file a request for agency action requesting that the State Engineer issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division pursuant to Section 63G-4-503. A request for a declaratory order shall be filed in accordance with Subsection 63G-4-201(3) which request commences an informal adjudicative proceeding. A request shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63G-4-207.

The State Engineer may at his discretion decline to issue declaratory orders if the request concerns matters in issue before a pending adjudicative proceeding, or where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing an order.

R655-6-20. Emergency Orders.

Except as otherwise provided for by statute, the Division may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63G-4-502.

KEY: administrative procedures, water rights

1992

Notice of Continuation June 15, 2012

63G-4-203

73-1

73-2

73-3

73-5

73-6

73-22

R655. Natural Resources, Water Rights.**R655-15. Administrative Procedures for Distribution Systems and Water Commissioners.****R655-15-1. Authority.**

(1) This rule is promulgated pursuant to Subsections 73-2-1(5)(a) and 73-2-1(5)(b) which authorize the State Engineer to make rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with Chapter 73-5, "Administration and Distribution."

R655-15-2. Purpose.

(1) Pursuant to authority delegated to the State Engineer by Section 73-5-1, this rule establishes procedures governing the creation, organization, and operation of water Distribution Systems administered by the State Engineer, including the appointment, responsibilities, and authority of Water Commissioners to assist in the administration of Distribution Systems.

(2) The purpose of this rule is to provide guidance and mechanisms enabling the State Engineer to fulfill the duties delegated by Section 73-5-3.

R655-15-3. Application of Rule.

(1) This rule is applicable statewide to the regulation, distribution, diversion, and use of the waters of the state.

(2) This rule shall be liberally construed to permit the Division of Water Rights to effectuate the intent and purposes of applicable Utah law.

(3) The State Engineer may make exceptions to the provisions of this rule as necessary to ensure adequate and appropriate regulation, distribution, and measurement of water for Distribution Systems involving interstate streams.

R655-15-4. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Assessment" means monies paid by water users to the State Engineer specifically to defray the costs of a Distribution System as described in Subsection 73-5-1(3). Assessments are deposited into and appropriate payments made from the "Water Commissioner Fund" established by Section 73-5-1.5.

(b) "Control Structure" means any structure or device including but not limited to diversion dams, head gates, check dams, valves, or other installation that the State Engineer determines to be necessary for the proper regulation and distribution of water.

(c) "Deputy Water Commissioner" (Deputy Commissioner) means a person appointed by the State Engineer in accordance with Subsection 73-5-1(1). A Deputy Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the Water Commissioner.

(d) "Distribution Account" means the accounting unit established by the Division of Water Rights ("Division") for calculation of assessments and for tracking the assessments made to and payments collected from each water user.

(e) "Distribution Order" means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by Chapter 73-5. Distribution Orders are enforceable under the provisions of Sections 73-2-25 and 73-2-26.

(f) "Distribution Season" means that period of the year during which the regulation of water distribution and/or the measurement of water by a Water Commissioner is necessary as determined by the State Engineer.

(g) "Distribution System" means an organization of the

owners of water rights within a river system or hydrologic unit, or a portion of a river system or hydrologic unit, that have been designated by the State Engineer for regulation by one or more Water Commissioners in accordance with Subsections 73-5-1(1)(b), 73-5-1(1)(c), and 73-5-1(2).

(h) "Distribution System Committee" (Committee) means the subgroup of water users properly designated to represent all water users within a Distribution System.

(i) "Division" means the Division of Water Rights of the State of Utah. The terms "Division" and "State Engineer" may be used interchangeably unless indicated otherwise by the context of the usage.

(j) "Enforcement Tag" means any orange tag attached by a water commissioner to or near a control structure or water measuring device in situations where the water user is ordered to comply with the water commissioner's regulation and distribution of water. An enforcement tag constitutes a distribution order and is enforceable in the same manner.

(k) "Measuring Device" means any structure or device approved by the State Engineer but not limited to flumes, weirs, meters, or similar devices that can be used to adequately determine the instantaneous flow of water or the volume of water measured over a period of time with an accuracy commensurate with industry standards.

(l) "Regulation Tag" means a white tag used by a water commissioner to inform and instruct the water users regarding the regulation and distribution of water at the location where the tag is placed.

(m) "State Engineer" means the Director of the Division of Water Rights appointed in accordance with Section 73-2-1 or other person acting in a legally delegated capacity as an agent, assistant, employee or representative of the Director. The terms "State Engineer" and "Division" may be used interchangeably unless indicated otherwise by the context of the usage.

(n) "Voluntary Agreement" means an agreement entered into by a group of water right owners whereby the owners stipulate to have the Water Commissioner regulate and distribute the water rights described in the agreement to the group of owners as if the group were a single entity such as a water company.

(o) "Voting Block" means a group of water users, designated as such by the State Engineer, who share a common interest within a Distribution System because of the nature of their water rights, the geographic location of their water use, or any other element of their water rights or water usage.

(p) "Water Commissioner" (Commissioner) means a person appointed by the State Engineer in accordance with Subsection 73-5-1(1)(a). A Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the State Engineer as contemplated at Section 73-5-3.

(q) "Water Company" means a water user organization that owns water rights, to which water is distributed by a Commissioner and which, in turn, delivers and distributes water to its members on the basis of proportional ownership of shares or other interest. A water company must be formally incorporated under applicable State of Utah statutes and may be either a for-profit entity or a mutual, non-profit entity.

(r) "Water User" means an individual person, a group acting cooperatively under a voluntary agreement, a water company, a municipality, a special district, a state or federal agency, or any other legal entity that meets the following criteria:

(i) Owns a water right included within a Distribution System;

(ii) Is subject to payment of an assessment;

(iii) Has an identifiably separate and distinct interest in the use of water in the distribution system.

The members of a group acting under a voluntary

agreement; a water company's members, shareholders or officers; and those persons served by a municipality, special district, or other governmental entity are not considered water users under this definition, but are represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group or entity. A group of co-owners, including a husband and wife, who jointly own a water right with an undivided interest are not considered separate water users under this definition, but are also represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group. This definition applies only to Rule R655-15.

R655-15-5. Distribution Systems.

(1) To achieve the purposes set forth in Section 73-5-3, the State Engineer:

(a) Shall create a Distribution System when ordered by the district court: or

(b) May create a Distribution System when the State Engineer determines that a Distribution System is necessary as a result of:

(i) Investigations initiated by the Division; or

(ii) A request submitted by water users with sufficient supporting information.

(2) As authorized in Section 73-5-1, the State Engineer shall:

(a) Designate by geographical or political boundary, or other suitable criteria, the water rights that shall be included in the Distribution System; and

(b) Determine whether one or more Commissioners are required to regulate and distribute water according to the water rights included in the Distribution System.

(3) To establish a new Distribution System, the State Engineer shall consult with the water users who would potentially be included within the system in accordance with Section 73-5-1. The State Engineer shall:

(a) Provide timely notice to water users shown on the records of the Division as owning water rights within the proposed Distribution System.

(b) Hold a public meeting to:

(i) Inform the water users of the justifications for the Distribution System, the boundaries or the Proposed Distribution System, the water rights that would be regulated within the Distribution System, and the estimated costs of operating a Distribution System;

(ii) Explain the State Engineer's purposes, policies, and procedures regarding Distribution Systems; and

(iii) Receive comments from the water users regarding the justifications for a Distribution System and the other information presented at the meeting. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Hold an organizational meeting or meetings to:

(i) Establish a Committee or select a Distribution System Chair;

(ii) Prepare an operational budget for the Distribution System;

(iii) Establish a method of calculating assessments; and

(iv) Receive a recommendation(s) regarding the appointment of a Commissioner(s) and, if necessary, one or more Deputy Commissioners.

(d) Issue an Order of the State Engineer establishing the Distribution System. The Order shall be issued to all water users within the Distribution System and shall set forth:

(i) The organization of the Distribution System;

(ii) The method of calculating assessments; and

(iii) Any other information required for the effective operation of the Distribution System.

(e) Appoint one or more Commissioners and/or Deputy

Commissioners;

(f) Establish and maintain a system of distribution accounts that shall be the basis for making assessments to the water users in the Distribution System.

(4) To modify the extent, organizational structure, or any other aspect of a Distribution System the State Engineer shall:

(a) Provide timely notice to each water user shown on the Division's records as being responsible for a Distribution Account included in the Distribution System; and

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the proposed modifications;

(ii) Receive comments regarding the proposed modifications to the Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Issue an Order of the State Engineer modifying the Distribution System. The Order shall be delivered to all water users within the modified Distribution System and shall describe the modifications made to the Distribution System.

(5) The State Engineer may determine, based on an investigation or other pertinent information, that an established Distribution System is no longer necessary to achieve the purposes set forth in Section 73-5-3. To dissolve a Distribution System, the State Engineer shall:

(a) Provide timely notice to the water users included in the Distribution System;

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the dissolution of the Distribution System;

(ii) Receive comments regarding the dissolution of the Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Relieve the Commissioner of responsibilities and authority regarding the regulation and distribution of water;

(d) Retire any outstanding financial obligations of the Distribution System and return any funds pertaining to the Distribution System remaining in the Water Commissioner Fund to the water users on a pro-rata basis according to the assessments paid over the previous five years;

(e) Take custody of all records maintained by the Distribution System; and

(f) Take custody of all equipment, vehicles and other physical assets accumulated in the operation of the Distribution System, said assets to be disposed in a manner consistent with pertinent statute or other regulation.

(g) Issue to all water users within the Distribution System an Order of the State Engineer dissolving the Distribution System.

(6) A Distribution System consists of the following parties:

(a) The State Engineer;

(b) One or more Commissioners and any appointed Deputy Commissioners;

(c) A Committee or Distribution System Chair; and

(d) The water users.

(7) The composition, authority, duties and responsibilities of the parties identified immediately above are described in the following sections.

R655-15-6. State Engineer.

(1) May, as authorized in Subsection 73-2-1(5), make administrative rules regarding Water Commissioners and Distribution Systems.

(2) May, as authorized in Section 73-5-1, establish a

Committee or Distribution System Chair to represent water users.

(3) Shall consult with the water users, directly or through the Committee, regarding the qualifications, duties, compensation and appointment of the Commissioner(s);

(4) Shall appoint the Water Commissioner(s);

(5) May appoint one or more Deputy Commissioners;

(6) Shall retain authority and responsibility for supervision of the Commissioner and Deputy Commissioner(s) to assure that water is measured, divided, regulated, and distributed in a manner consistent with the rights of the water users.

(7) Shall provide fiduciary supervision, accounting and operation of the Water Commissioner Fund, including the calculation of assessments, mailing of assessment notices, collection of assessments, issuance of payments for the expenses of the Distribution System, and an annual reporting to the Committee and/or the water users of the status of finances of the Distribution System.

(8) Shall hold an Annual Meeting with the Committee and/or the water users as described in this rule.

(9) Shall, in consultation with the Committee Chair or the Distribution System Chair, designate a date, time and place of an Annual Meeting of the water users and provide a timely notice of the Annual Meeting and the proposed agenda to all necessary parties.

(10) May issue Distribution Orders.

R655-15-7. Water Commissioners.

(1) An applicant for the position of Water Commissioner ("Commissioner") shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in regulating the Distribution System;

(c) Have demonstrated knowledge of:

(i) Irrigation practices and technologies;

(ii) The local area and the water users involved in the Distribution System;

(iii) The use and maintenance of water control and measurement equipment and devices;

(iv) Water measurement units, calculations and conversions; and

(v) Maps, standard land description terminology, units of measure and conversions,

(d) Have a demonstrated knowledge of or the ability and willingness to learn;

(i) Principles and terminology of Utah water rights law; and

(ii) Technology necessary for the effective regulation, distribution, measurement and reporting of water use in the Distribution System.

(e) Have a demonstrated ability to communicate effectively verbally and in writing;

(f) Have a demonstrated ability to work cooperatively with persons with conflicting interests to find appropriate solutions to challenges and/or resolve disputes;

(g) Be available at all times necessary throughout the distribution season to fulfill the duties of Water Commissioner set forth herein;

(h) Hold a valid Utah Drivers License

(i) Be able to walk over rough and uneven terrain for distances up to a half mile.

(j) Be less than 75 years of age. A person who is 75 years of age or older will not be appointed as Commissioner by the State Engineer.

(k) The applicant must disclose to the State Engineer and the interview panel any conflict of interest related to exercising the duties of the Commissioner. The State Engineer will determine whether a disclosed conflict of interest would prevent

objective regulation and distribution of water on the Distribution System in accordance with the water rights and the instructions and Distribution Orders from the State Engineer. If such a conflict of interest exists, the applicant will be deemed ineligible for appointment. If such a conflict develops or is found to exist subsequent to an appointment, the Commissioner will be removed as described in this rule.

(2) Selection Process

(a) Public notice of the intent to fill a Commissioner position shall be advertised in a newspaper of local circulation in the area where the distribution system is located. The notice shall:

(i) Include a general description of the qualifications, duties, and compensation related to the position;

(ii) include the method of making application for the position; and

(iii) Be published in a manner and for a duration determined by the State Engineer as reasonable and sufficient.

(b) Application for the Water Commissioner position shall be made in writing to the Committee Chair or the Distribution System Chair as directed in the public notice. The application shall include a summary of the applicant's qualifications and experience. The Chair, in consultation with the State Engineer, shall determine, based on the relative qualifications of the applicants, those applicants to be invited for an interview.

(c) Interviews for the position of Water Commissioner shall be conducted by an interview panel. The interview panel shall consist of the Committee and the State Engineer. At the discretion of the Committee and with the consent of the State Engineer, the Committee may include additional water users on the interview panel to assure all interests are adequately represented. If a Committee has not been established on the Distribution System, the panel shall include the Distribution System Chair, a representative group of water users selected by the Distribution System Chair, and the State Engineer.

(d) The recommendation to the State Engineer concerning the appointment of the Commissioner shall be based on the results of the applicant interviews as determined by a majority vote of:

(i) The water users of the Distribution System if:

(A) The interview panel consisted of selected water users; or

(B) The interview panel consisted of a Committee that prepares recommendations for the water users' ratification.

(ii) The Committee if the Committee is established to act without ratification by the water users.

(e) If a majority of the water users, as determined by a vote of the water users or by a vote of the Committee as described above, agrees on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the recommended applicant as Commissioner based on the recommendation. If the water users cannot agree as evidenced by a majority vote, the State Engineer shall select a person from among the qualified applicants for appointment as Commissioner.

(3) If the person selected and appointed as Commissioner as a result of the process outlined in (2) above is an employee of one of the water users on the distribution system (such as a water company or water conservancy district) and, if the Commissioner's duties will be performed during the hours of employment by the water user, the State Engineer shall enter into an agreement with the Commissioner's employer. The agreement shall cover, at minimum, the following issues:

(a) The duties to be performed by the Commissioner during the hours of employment;

(b) Supervision by the State Engineer and accountability of the Commissioner to the State Engineer in the performance of all official duties; and

(c) The compensation that will be paid by the Distribution System to the employer for the time spent by the Commissioner

in the performance of his/her official duties.

(4) The Commissioner shall be appointed for a term of four years in accordance with Subsection 73-5-1(1)(a).

(a) A new four-year term shall commence with each appointment.

(b) The four-year term shall commence at the Annual Meeting or other Distribution System meeting or Committee meeting wherein the Commissioner appointment recommendation was made to the State Engineer.

(c) The four-year term shall run until the Annual Meeting or Committee Meeting held during the fourth year following the Commissioner's appointment.

(d) Regardless of the number of years remaining in a term, a Commissioner's term of appointment will terminate at the Annual Meeting prior to the Commissioner's 75th birthday.

(e) In exceptional situations, the State Engineer may extend a person's appointment as water commissioner to one additional term beyond the person's 75th birthday or until age 79 (whichever comes first). The decision to extend the person's appointment for one additional term must be based on consideration of a written request signed by at least five or a majority (whichever is less) of the water users of the water distribution system. The request must include the following:

(i) An attestation that the person currently demonstrates that he/she is physically and mentally capable of adequately performing the water commissioner duties;

(ii) An explanation why the replacement of the water commissioner would pose a burden and a hardship on the water distribution system; and

(iii) The steps that will be taken by the water users to resolve the concerns described in (ii) above by the end of the extended appointment.

(f) If a person is appointed as water commissioner to an extended term beyond his/her 75th birthday, that appointment will be reviewed with the water users on a year-by-year basis at the annual distribution meeting. If, as a result of that review, the State Engineer determines that the person is no longer physically or mentally capable of adequately performing the water commissioner duties, the person's appointment as water commissioner will be ended.

(5) If a Commissioner retires, resigns, or is otherwise removed prior to completing the full four-year term of appointment, the uncompleted term shall not be filled. The process described in these rules for selecting a Commissioner shall be followed in making a new appointment.

(6) A vacant Commissioner position shall be filled as soon as possible after the vacancy occurs. However, sufficient time will be taken as required to adequately complete the selection process as described in these rules.

(7) Should a Commissioner vacancy occur during the distribution season, Division staff shall act in the stead of the Commissioner to regulate and distribute water in the Distribution System until such time as a new Commissioner is appointed.

(8) A person may be appointed to serve successive terms as Commissioner without limit.

(9) Authority

(a) The Commissioner is an assistant to the State Engineer and is authorized to act as described in Sections 73-5-3 and 73-5-4 to assure that water is properly measured, divided and distributed to the water users in accord with their respective water rights.

(b) As described in Section 73-5-3, the Commissioner is authorized to enter upon private property whenever necessary to carry out the provisions of statute and these rules.

(c) In all official duties and responsibilities of the position, the Commissioner is authorized to act as directed by the State Engineer.

(10) A person may serve concurrently as Commissioner for

more than one Distribution System.

(11) Duties

(a) The Commissioner shall consult with the State Engineer to exchange information and receive direction. The Commissioner may also consult with the Committee or Distribution System Chair to exchange information.

(b) The Commissioner shall regulate the diversion and distribution of water:

(i) In accordance with properly established water rights on the records of the Division; and

(ii) In accordance with State Engineer Distribution Orders.

(c) The Commissioner shall measure and make records of the measurements of:

(i) The water delivered to each Distribution Account;

(ii) Any flows or volumes of water and reservoir water levels necessary for the proper regulation of water distribution in the Distribution System; and

(iii) Any other flows or volumes of water and reservoir water levels as directed by the State Engineer.

(d) The Commissioner shall regularly inspect Distribution System facilities, including water measuring devices, head gates, and other water control structures, to ensure they are operating properly and adequately maintained to meet the purposes of the Distribution System.

(i) The Commissioner shall perform or arrange for the performance of such facilities maintenance work as is included within the scope of the duties assigned and consistent with the appointment.

(ii) If inadequacies related to the regulation, distribution, and measurement of water are identified in the Distribution System facilities, said inadequacies being outside the scope of the Commissioner's designated duties, the Commissioner shall notify the responsible water user(s), the Distribution Committee Chair or Distribution System Chair, and the State Engineer.

(e) The Commissioner shall assist the State Engineer as requested to improve water measurement and accounting practices and procedures in the Distribution System.

(f) As new technologies are implemented to improve the efficiency of water delivery and distribution, the Commissioner shall become proficient in the use and application of the technology. Should a Commissioner prove unable or unwilling to acquire such proficiency in a reasonable time, this condition shall constitute grounds for termination of the Commissioner's appointment.

(g) The Commissioner shall maintain records and make reports including:

(i) Complete, accurate, current, and legible records sufficient to demonstrate faithful performance of the duties designated.

(A) All records shall be available to the State Engineer upon request.

(B) All records shall be submitted to the State Engineer upon termination of the Commissioner's service.

(ii) A written Annual Report of the Distribution System including all information determined necessary by the State Engineer in consultation with the Committee or Distribution System Chair.

(A) The report shall include water use data based on actual water measurements, a record of regulation and distribution issues and decisions made during the distribution season, and any other information required by the State Engineer.

(B) The report shall be prepared in a format approved by the State Engineer.

(C) The report shall be delivered to the State Engineer and the Committee and/or water users each year at the Annual Meeting unless another reporting deadline has been approved by the State Engineer.

(h) The Commissioner shall assist, as requested, in acquiring current ownership, mailing address, and other

information required to update Distribution Accounts.

(i) The Commissioner shall provide to the State Engineer, in a timely manner, an accounting of the water delivered to each water user as required for the calculation of Distribution Assessments.

(j) When necessary to effect the proper distribution of water, the Commissioner may adjust or close and lock a head gate and/or control structure to prevent changes in the control settings.

(i) Such adjustments and locks shall remain as set by the Commissioner until a change in regulation or distribution is required.

(ii) In such cases, the Commissioner may attach a State Engineer Water Regulation Tag at or near the head gate or control structure.

(k) As necessary in effecting a State Engineer Distribution Order or in a Division enforcement proceeding, the Commissioner may close and lock a head gate and/or control structure to cease delivery of water to the affected water user.

(i) Such closure and locking of a head gate and/or control structure shall remain in place until the conditions of the Distribution Order or enforcement proceeding have been met.

(ii) In such cases, the Commissioner shall attach a State Engineer Water Enforcement Tag at or near the head gate or control structure.

(l) The Commissioner shall assist the State Engineer as necessary in any Division enforcement proceeding related to the Distribution System.

(m) The Commissioner shall perform all other duties specific to the Distribution System as determined by the water users or the Committee and approved by the State Engineer.

(n) The Commissioner shall accurately complete and submit to the State Engineer all necessary forms provided by the State Engineer and supporting documentation of the expenses of the Distribution System.

(o) The Commissioner shall supervise and be responsible for the efforts of any Deputy Commissioner(s) appointed to assist in the regulation, distribution, and measurement of water on the Distribution System.

(p) The Commissioner shall devote the time necessary for the completion of the duties outlined in these rules and shall be generally available for contact at any reasonable time during the period of the distribution season.

(12) Compensation and Benefits:

(a) The salary or wage for a Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and state taxes and other required withholdings.

(ii) A Commissioner who retires, resigns or is otherwise removed during a distribution season will be compensated for only the portion of the distribution season completed prior to the termination of the Commissioner's service.

(b) A Commissioner shall be provided with a means of transportation for all travel related to fulfillment of official duties related to the Distribution System. The transportation may be provided by either of the following means:

(i) The Distribution System may provide a suitable vehicle to be used by the Commissioner solely in the performance of the Commissioner duties, with all vehicle expenses paid through the Distribution System; or

(ii) The Distribution System may compensate the Commissioner for the use of a personal vehicle in the performance of the Commissioner's official duties. Compensation shall include the total costs of operating and maintaining the vehicle for that portion of the vehicle use dedicated to the Commissioner's official duties. Compensation may be made:

(A) For actual vehicle operation and maintenance costs as

reported and documented by the Commissioner; or

(B) At a per-mile rate determined from industry standards for operation and maintenance of similar vehicles in similar conditions; or

(C) Based on a flat monthly or yearly amount agreed upon by the water users' representatives and the Commissioner and approved by the State Engineer. The agreed amount must reasonably represent the actual costs of operating the vehicle.

(c) A Commissioner shall be provided with communication and computer equipment necessary for the effective performance of the Commissioner duties. The cost of purchasing, operating, and maintaining such equipment shall be borne by the Distribution System. If a Commissioner chooses to use personally owned equipment, compensation shall be made on the basis of documentation showing the costs of acquisition, maintenance and operation of said equipment and the proportion of said costs directly attributable to the performance of the Commissioner's official duties. Cost documentation must be acceptable to the Committee or Distribution System Chair and approved by the State Engineer.

(d) A Commissioner shall be provided with adequate office space and clerical assistance to enable regulation and distribution of water on the Distribution System. The need for office space will be determined in consultation among the State Engineer, the Commissioner, and the Committee or Distribution System Chair.

(e) A Commissioner shall be provided, at the expense of the Distribution System, such other equipment as is needed to effectively measure, distribute, and regulate water on the Distribution System.

(f) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(g) A Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System in accordance with pertinent regulations governing the same.

(h) The Distribution System shall pay the cost of the retirement benefit for any Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(i) The Commissioner shall be reimbursed according to the Distribution System budget for expenses incurred in the performance of the Commissioner's duties. The Commissioner must request reimbursement by properly completing and submitting reimbursement forms and documentation as directed by the State Engineer. Unless prior arrangements have been made with the Committee or the Distribution Chair and approved by the State Engineer, reimbursement forms and supporting documentation must be submitted to the State Engineer no later than December 15th of the calendar year in which the expense was incurred. Unless prior arrangements have been made, reimbursement will not be made on reimbursement forms submitted after December 15th of the year in which the expense was incurred.

(j) If the Commissioner is an employee of a regulated water user as described in (3) above, the Commissioner's salary, health insurance, worker's compensation insurance, retirement, and related payroll costs will be as provided by the employer. The Distribution System will compensate the employer for that portion of these costs that pertain directly to the performance of Commissioner's duties. Any other Commissioner expenses required for the operation of the Distribution System will be paid by the Distribution System as outlined above.

(13) Removal

(a) A Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Commissioner may be

instigated by the State Engineer or as a result of a petition to the State Engineer from the water users or Committee.

(ii) The process for removing a Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Commissioner.

R655-15-8. Deputy Water Commissioner.

(1) One or more Deputy Water Commissioners ("Deputy Commissioner") may be appointed by the State Engineer to assist the Commissioner.

(2) The need for a Deputy Commissioner shall be determined by the Commissioner and the Committee or Distribution System Chair and approved by the State Engineer.

(3) An applicant for the position of Deputy Commissioner shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in assisting the Commissioner.

(c) Be less than 75 years of age. A person who is 75 years of age or older will not be appointed as Deputy Commissioner by the State Engineer.

(d) Hold a valid Utah Drivers License

(e) Be able to walk over rough and uneven terrain for distances up to a half mile.

(4) Selection Process

(a) Application for the position of Deputy Commissioner shall be made to the current Commissioner.

(b) The current Commissioner shall interview applicants as necessary and present a recommendation to the Committee or Distribution Committee Chair for consideration.

(c) If the current Commissioner and the Committee or Distribution System Chair are in unanimous agreement on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the applicant as Deputy Commissioner based on that recommendation. If there is no unanimity, the State Engineer shall select a person from among the qualified applicants to appoint as Deputy Commissioner.

(5) A Deputy Commissioner shall be appointed to a term corresponding to the term of the current Commissioner.

(a) If a Deputy Commissioner is appointed part way through the term of a currently serving Commissioner, the Deputy Commissioner's first term shall be equal to the remaining term of the current Commissioner.

(b) When a Commissioner retires, resigns, or is otherwise removed from appointment, the appointments of all Deputy Commissioners shall be concurrently terminated. However, should the Commissioner position become vacant during a distribution season, the appointment of any Deputy Commissioner may be extended until the end of the distribution season.

(c) Regardless of the number of years remaining in a term, a Deputy Commissioner's term of appointment will terminate at the last Annual Meeting prior to the Deputy's 75th birthday.

(6) A person may be appointed to serve successive terms as Deputy Commissioner without limit.

(7) When acting under specific direction of the Commissioner, a Deputy Commissioner shall have the same authority as delegated to the Commissioner as an agent of the State Engineer.

(8) A person may serve concurrently as Deputy Commissioner for more than one Distribution System.

(9) The duties of the Deputy Commissioner(s) shall be to assist the Commissioner, as assigned, in the performance of the Commissioner's duties to fulfill the purposes of the Distribution System.

(10) Compensation and Benefits:

(a) The salary or wage for a Deputy Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and state taxes and other required withholdings.

(ii) The total amount of salary or wage budgeted each year shall be paid to the Deputy Commissioner within the calendar year upon successful completion of the duties and responsibilities of the position.

(b) A Deputy Commissioner may be provided with a means of transportation for all travel related to regulation of the Distribution System. The transportation may be provided by any of the means described in the above Section entitled "Water Commissioner".

(c) A Deputy Commissioner shall be provided, at the expense of the Distribution System, such equipment and supplies as are needed to effectively assist the Commissioner in the assigned duties on the Distribution System. Compensation shall be in a manner equivalent to that adopted for compensation of the Commissioner for similar expenses.

(d) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Deputy Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(e) A Deputy Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System and in accordance with pertinent regulations governing same.

(f) The Distribution System shall pay the cost of the retirement benefit for any Deputy Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(11) Removal

(a) A Deputy Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Deputy Commissioner may be instigated by the State Engineer or as a result of a petition to the State Engineer from the Commissioner, Committee, or the water users.

(ii) The process for removing a Deputy Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Deputy Commissioner.

R655-15-9. Distribution System Committee.

(1) The Distribution System Committee ("Committee") shall be established in a manner that will provide equitable representation of the interests of all water users in the Distribution System.

(2) A Committee may be established by the State Engineer in a manner such that either:

(a) The Committee prepares recommendations for ratification by the water users of the Distribution System; or

(b) The decisions and recommendations of the Committee need no ratification by the water users of the Distribution System.

(3) The Committee shall be composed of no less than five and no more than 15 representatives of the water users. The number of Committee members and the terms of office shall be determined by majority vote of the water users present at an Annual Meeting or specially called organizational meeting, subject to the approval of the State Engineer.

(4) Members of the Committee are to equitably represent the water users of the Distribution System and may be:

(a) Elected from among the water users for a specified term of office; or

(b) Duly appointed representatives of water user groups such as water companies, voluntary agreement groups,

municipalities, or special districts who serve at the pleasure of the organization represented; or

(c) A combination of the foregoing under (a) and (b);

(d) Re-elected or reappointed without term limits unless barred by other policy or rule duly adopted.

(5) Representation on the Committee shall be limited to one Committee member from each: group acting cooperatively according to a voluntary agreement; water company; municipality; special district; state or federal agency; voting block; or other grouping of water users according to geography or type of water right.

(6) Committee members representing a group or other legal entity shall be elected from among the group or legal entity to be represented on the committee unless the governing documents of said group or legal entity mandate another method of selection.

(7) A quorum of the Committee must be present in order for the Committee to act on any issue regarding the Distribution System. A quorum shall consist of no less than one-half of the Committee members. The business of the Committee shall be conducted by a simple majority vote of the Committee members present at the meeting. Each member of the Committee shall have one vote. In the event of a tie vote, the business at hand may be deferred. If the business is sufficiently urgent that deferment is not practical, the matter shall be decided by the State Engineer in accordance with Subsection 73-5-1(2)(c).

(8) Changes in the composition, number of members, terms of office, etc., of the Committee may be made upon majority vote of the water users present at a properly scheduled Annual Meeting, subject to the approval of the State Engineer;

(9) The Committee shall elect from among its members:

(a) A Chair who shall have responsibility to:

(i) Conduct all Annual Meetings of the water users;

(ii) Conduct all special meetings of the Committee; and

(iii) Act as agent of the Committee in communications with the State Engineer, the water users and other entities.

(b) A Vice-Chair who shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is absent or otherwise unable to fulfill those duties.

(10) The Committee shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users and all meetings of the Committee in a format approved by the State Engineer, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Prepare copies of the minutes of each special meeting of the Committee for distribution, review and approval by the Committee at the next subsequent special meeting;

(d) Maintain a permanent record of all minutes of the meetings of the water users and the Committee;

(e) Maintain a complete and current record of the names, contact information, representation, and terms of office of all members of the Committee;

(f) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users or special meetings of the Committee;

(g) Submit to the Chair for approval by the Committee an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(h) Submit all records of the Distribution System thus maintained:

(i) To the Chair of the Committee upon termination of service as Secretary; or

(ii) To the State Engineer upon dissolution of the Distribution System.

(11) A Committee whose actions are ratified by the water users shall prepare recommendations for the water users regarding:

(a) The recommendation to the State Engineer concerning the appointment of a Commissioner;

(b) The recommendation to the State Engineer concerning the appointment of a Deputy Commissioner need not be ratified by the water users;

(c) The duties of the Commissioner or Deputy Commissioner specific to the Distribution System;

(d) The operating budget for the Distribution System including compensation for the Commissioner and Deputy Commissioner(s);

(e) The total of the assessments to be levied to meet the operating expenses of the Distribution System; and

(f) Any other business necessary for the proper operation of the Distribution System.

(12) A Committee whose actions need not be ratified by the water users shall make all decisions and recommendations on behalf of the water users regarding the items listed above.

(13) The Committee may recognize and authorize the seating of a substitute member of the Committee to act in the place of any member absent or otherwise unable to attend to those duties. The substitute member shall be selected from among the same group represented by the absent member.

R655-15-10. Distribution System Chair and Vice-Chair.

(1) If a Committee is not established, the water users shall elect a Distribution System Chair and Vice-Chair ("Chair and Vice-Chair") by majority vote of the water users present at an Annual Meeting or specially called organizational meeting.

(2) A Chair shall have responsibility to:

(a) Conduct all Annual Meetings of the water users; and

(b) Act as agent of the water users in communications with a Commissioner, a Deputy Commissioner, the State Engineer, the water users and other entities.

(3) The Vice-Chair shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is absent or otherwise unable to fulfill those duties.

(4) The Chair shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Maintain a permanent record of all minutes of the Annual Meetings of the water users;

(d) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users;

(e) Submit to the Chair an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(f) Submit all records of the Distribution System thus maintained:

(i) To the Chair upon termination of service as Secretary; or

(ii) To the State Engineer upon dissolution of the Distribution System.

R655-15-11. Water Users.

(1) Water users shall pay distribution assessments within the deadlines established in this rule.

(2) Water users may participate in organizational or Annual Meetings to:

(a) Select representatives to serve as members of the Committee or to elect a Distribution System Chair and Vice-Chair;

(b) Exchange information with the State Engineer, Commissioner and Committee or Distribution System Chair pertinent to the fulfillment of the purposes of the Distribution System.

(c) Vote on Distribution System business as described in this rule.

(3) A water user who is unable to attend an Annual Meeting or other meeting of the Distribution System may designate a person by proxy to act in the water user's stead in the conduct of official business of the Distribution System. The proxy shall:

(a) Be in writing;

(b) Name the person who is giving the proxy and who is recognized as a water user on the Distribution System;

(c) Name the person who is designated to act in the place of the absent water user;

(d) State the meeting and the date of the meeting at which the proxy is to be used;

(e) State any limitations on the authority of the proxy to act in the place of the absent water user;

(f) Be signed by the water user giving the proxy;

(g) Be submitted to the Committee or the Distribution System Chair at the meeting where the proxy is to be used prior to any attempt to act as proxy; and

(h) Be retained by the officers of the Distribution System as part of the records of the meeting.

(4) Except as provided below for a voting block, each water user shall have one vote in the conduct of official business of the Distribution System.

(5) To assure equitable representation of the interests of all water users in conducting the business of the Distribution System, the State Engineer may organize water users into voting blocks.

(a) A simple majority of the water users in a voting block shall determine the vote to be cast by the voting block.

(b) Each voting block in a Distribution System so organized shall have one vote in the conduct of the official business of the Distribution System.

(6) All water users shall assist the Commissioner in fulfilling the duties of that appointment as they pertain to the rights of the water user.

(7) Each water user shall abide by the regulation and distribution directions issued or set by a Commissioner and any appointed Deputy Commissioner, including but not limited to head gate and/or control structure settings. A water user who fails to abide by the direction of a Commissioner or Deputy in the performance of official duties is subject to enforcement proceedings and resulting administrative penalties as established by statute.

(8) Each water user shall maintain in workable and accessible condition all head gates, control structures, measuring devices and other equipment determined necessary by the State Engineer for the Commissioner's control, measurement and delivery of water.

(a) Measuring devices, head gates, and control structures shall be installed by and at the expense of the water user at each location determined necessary by the State Engineer.

(b) Measuring devices, head gates, and control structures shall be of a design approved by the State Engineer.

(c) Safe and reasonable access shall be provided to all head gates, control structures, measuring devices and other installations required for the Commissioner's control, measurement, and delivery of water.

(9) Water users shall provide reports on water use as

required by the State Engineer pursuant to Section 73-5-8.

R655-15-12. Annual Meetings.

(1) The State Engineer shall hold an Annual Meeting of the water users and/or the Committee prior to the start of each distribution season.

(2) The purpose of the Annual Meeting shall be to address the following matters:

(a) Review, amend as necessary, and approve the minutes of the next previous Annual Meeting;

(b) Review the finances of the Distribution System including:

(i) Current account balance of Distribution System funds;

(ii) Budgeted amounts and expenditures of the previous fiscal period;

(iii) Status of assessment collections including delinquent accounts;

(c) Set a budget for the current or prospective fiscal period. The budget shall provide for the following expenses:

(i) Compensation of the Commissioner(s), Deputy Commissioner(s), and Secretary;

(ii) Office and clerical expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iii) Equipment expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iv) Other expenses necessary for the effective distribution and regulation of water and operation of the Distribution System including those determined necessary by the State Engineer such as the State Engineer's Assessment for disbursement of funds, accounting, and assessment collection.

(d) Set a total assessment to be collected from the water users to defray the expenses of the adopted budget.

(e) Hear, review, and approve the Commissioner's Annual Report; if the report is unacceptable, motions may be adopted to amend the report;

(f) Review and amend, subject to approval of the State Engineer, the duties of the Commissioner;

(g) Review the performance of the Commissioner and any Deputy Commissioners and hear any commendations, comments, or complaints relative to the previous year.

(h) Recommend the appointment of a Commissioner, as may be necessary;

(i) Elect members of the Committee, as may be necessary

(j) Receive a report or other information from the State Engineer concerning matters pertinent to the operation of the Distribution System;

(k) Conduct any other business as may be necessary to fulfill the purposes of the Distribution System.

R655-15-13. Distribution System Committee Meetings.

(1) Meetings of the Distribution System Committee ("Committee") shall be held as necessary to fulfill the purposes of the Distribution System.

(2) Committee meetings may be held in lieu of or in addition to the Annual Meeting with the water users as determined by the State Engineer.

(3) The Committee Chair and Vice-Chair shall be elected at a Committee Meeting.

(4) If the Committee meeting is held in lieu of the Annual Meeting with the water users, the purpose of the meeting shall be to address the matters described in Section entitled "Annual Meetings" herein.

(5) If the Committee meeting is held in addition to the Annual Meeting with the water users, the purpose of the meeting shall be to review information and develop recommendations on the matters described in the Section entitled "Annual Meetings," herein, for presentation to the water users.

R655-15-14. Assessments.

(1) A Distribution Account shall be established by the State Engineer for each water right or group of water rights within the Distribution System that shall include:

- (a) An account number;
- (b) The name, full mailing address, and other pertinent contact information for the person responsible for payment of the assessment associated with the account;
- (c) The water right or rights associated with the account;
- (d) Any other information that may be pertinent and useful in enabling identification of the water sources, beneficial use of water and place of use of the water rights associated with the account.

(2) Assessments to each Distribution Account shall be calculated so as to collect from each water user a pro rata share of the monies necessary to defray the expenses of the budget adopted at the Annual Meeting of the water users or at the Committee meeting.

(3) The method of calculating assessments shall be determined by the State Engineer, in consultation with the water users, Committee or Chair, to best meet the needs of the Distribution System and assure an equitable distribution of costs among the water users. The assessment calculation method for a Distribution System may be based upon:

(a) The proportion of the total annual assessment amount which the allowed irrigated acreage under the Distribution Account bears to the total allowed irrigated acreage within the Distribution System; or

(b) The proportion of the total annual assessment amount which the allowed water flow in cubic feet per second (cfs) or allowed annual diversion in acre-feet (AF) under the water right(s) in the Distribution Account bears to the total allowed flow or diversion allowance for all water rights within the Distribution System; or

(c) The proportion of the total annual assessment amount which the quantity (AF) of water actually taken by or delivered under the water right(s) in the Distribution Account (as reported by the Commissioner for the year prior) bears to the total quantity of water actually taken or delivered within the Distribution System; or

(d) Any other method of calculation which shall be acceptable to the water users and approved by the State Engineer and which results in an equitable and proportional sharing of system costs among the water users.

(4) Water users who place disproportionate demands on the Commissioner, as based on the relative amount of their assessment and as determined by the State Engineer, may receive an increased assessment. The amount of the increase will be determined by the State Engineer to compensate for the increased time required of the Commissioner to satisfy or properly distribute water to the water user.

(5) Assessment notices shall be mailed to the responsible party for each Distribution Account no later than April 1 of each year unless unusual circumstances require a delay.

(6) Assessment payments shall be made payable to the Utah State Engineer.

(7) As set forth in Section 73-5-1(3), assessments for Distribution Systems shall be due on or before May 1 of the year in which they are levied.

(8) A delinquency charge shall be levied against Distribution Account balances that remain unpaid as of June 1 of each year.

(a) The amount of the delinquency charge shall be 10% of the unpaid Distribution Account balance unless otherwise determined by the State Engineer in consultation with the water users, Committee or Chair.

(b) The delinquency charges collected shall be deposited in the Water Commissioner Fund dedicated to the Distribution System.

(9) Actions taken for collection of delinquent accounts shall be at the discretion of the State Engineer as provided in Subsection 73-5-1(3)(c). Costs incurred by the Division in collection of delinquent accounts shall be included in the administrative costs budgeted as the State Engineer's Assessment for disbursement of funds, accounting, and assessment collection.

KEY: water distribution, water commissioner, distribution system

October 5, 2007

Notice of Continuation June 15, 2012

73-2-1(5)(a)

R657. Natural Resources, Wildlife Resources.**R657-44. Big Game Depredation.****R657-44-1. Purpose and Authority.**

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

- (1) the procedures, standards, requirements, and limits for assessing big game depredation; and
- (2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, authorizing the landowner or lessee to take specified big game animals for personal use within a designated area.

(h) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(i) "Nuisance" describes a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

(j) "Once-in-a-lifetime species" for the purposes of this section, includes bull moose and bison, bighorn sheep, and mountain goat regardless of sex.

(k) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

- (a) orally to expedite a field investigation; or
- (b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after

receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

- (i) removing the big game animals causing depredation; or
- (ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

- (A) herding;
- (B) capture and relocation;
- (C) temporary or permanent fencing; or
- (D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk;

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) the Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(E) the division may not issue mitigation permits for moose, bison, bighorn sheep, or mountain goat.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(A) mitigation permit vouchers for antlerless deer may authorize the take of one or two deer as determined by the division.

(B) the division may not issue mitigation permit vouchers for moose, bison, bighorn sheep, or mountain goat.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

- (a) the landowner or lessee; or
- (b) a landowner association that:
 - (i) applies in writing to the division;
 - (ii) provides a map of the association lands;
 - (iii) provides signatures of the landowners in the association; and
 - (iv) designates an association representative to act as

liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desires the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Section 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage

on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation and Nuisance Hunts for Buck Deer, Bull Elk or Buck Pronghorn or Once-in-a-Lifetime Species.

(1)(a) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts that are not published in the guidebook of the Wildlife Board for taking big game may be held.

(b) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts may be held when the buck deer, bull elk, buck pronghorn or once-in-a-lifetime species are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) determined to be nuisance.

(2) The depredation or nuisance hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing an unfilled limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(4) Post-season depredation or nuisance animal hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(5) A person may participate in the depredation hunter pool, for depredation or nuisance hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation or nuisance hunt must possess an unfilled, valid, limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for the species to be hunted, or must purchase the appropriate permit before participating in the depredation or nuisance hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, buck pronghorn or once-in-a-lifetime species harvested during a depredation or nuisance hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation or nuisance hunt in a limited entry or once-in-a-lifetime unit and harvests a trophy animal or a once-in-a-lifetime species, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation or nuisance hunt permits for buck deer, bull elk, buck pronghorn or once-in-a-lifetime species may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, buck pronghorn or once-in-a-lifetime species in one calendar year.

R657-44-8. Depredation and Nuisance Hunts for Antlerless Deer, Elk, Moose or Doe Pronghorn.

(1) When deer, elk, pronghorn or moose are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, or are determined to be nuisance, antlerless or doe hunts not listed in the guidebook of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation or nuisance animal hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, moose or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation or nuisance hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, moose or doe pronghorn permit shall purchase an appropriate permit.

(4) Hunters with depredation or nuisance hunt permits for antlerless deer, elk, moose or doe pronghorn may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk, pronghorn, or once-in-a-lifetime species are causing damage or are determined to be nuisance, hunts not listed in the guidebooks of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, pronghorn or once-in-a-lifetime species depredation or nuisance hunt may not possess an additional permit for that species during the same year, except

as provided in Rule R657-5 and the guidebooks of the Wildlife Board for taking big game.

(4) A person who has obtained a once-in-a-lifetime species depredation or nuisance hunt permit and has successfully harvested an animal may not obtain any other once-in-a-lifetime permit or hunt during any other once-in-a-lifetime hunt for that species as provided in R657-5, except for

(5) The division shall develop a process by which hunters can apply to the depredation hunter pool and post that process on the division website.

(6) Hunters who have not obtained the appropriate deer, elk, pronghorn or once-in-a-lifetime species permit shall purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the permit.

**KEY: wildlife, big game, depredation
February 7, 2011
Notice of Continuation June 19, 2012**

**23-16-2
23-16-3
23-16-3.5**

R710. Public Safety, Fire Marshal.**R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, and amendments and additions.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act, except as amended by provisions listed in R710-9-10, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

R710-9-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

2.9 "Restricted Account" means Firefighter Support Restricted Account.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.12 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that

particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed

ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Fire Advisory and Code Analysis Committee.

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-7. Enforcement of the Rules of the State Fire Marshal.

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-8. Fire Prevention Board Budget and Amendment Sub-Committees.

8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-9. Firefighter Support Restricted Account.

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

R710-9-10. Regulation of Novelty Lighters.

10.1 All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed

List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

R710-9-11. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

11.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13R, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13D, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Tag and Information. A tag shall be attached to the riser indicating the date the antifreeze solution was tested. The tag shall also indicate the type and concentration of antifreeze solution by volume with which the system is filled, the date the antifreeze was replaced if applicable, the name of the contractor that tested and/or replaced the antifreeze solution, the contractor's license number, a statement indicating if the entire system was drained and replaced with antifreeze, and a warning to test the concentration of the antifreeze solutions at yearly intervals.

R710-9-12. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-13. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-14. Adjudicative Proceedings.

14.1 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.

14.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

14.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

14.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

14.5 The Board shall act as the hearing authority, and shall

convene as an appeals board after timely notice to all parties involved.

14.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

14.7 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.

14.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, law
November 21, 2011
Notice of Continuation June 7, 2012**

53-7-204

R746. Public Service Commission, Administration.**R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.****R746-343-1. Purpose and Authority.**

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.**A. Definitions**

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a

state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.**A. Approved Application--**

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by mail. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.**A. Distribution Centers shall:**

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a

criminal activity as defined by Utah or federal law.

R746-343-15. Surcharge.

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is \$.06 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically handicapped, rates, telecommunications

June 20, 2012

Notice of Continuation December 13, 2007

54-8b-10

R746. Public Service Commission, Administration.**R746-400. Public Utility Reports.****R746-400-1. Scope and Applicability.**

This rule is promulgated by Section 54-3-21 and applies to public utilities and telecommunications corporations operating in the state of Utah. This rule shall not limit the ability of the Commission, or the Division, to otherwise obtain information from these entities, as provided by other rules or statutes.

R746-400-2. Division Authority.

The Division shall ensure compliance with this rule, prepare and distribute report forms, collect and store the completed reports and information provided by reporting entities subject to in this rule.

R746-400-3. General Definitions.

For purposes of this rule, the terms listed below shall bear the following meanings:

A. "Reporting entity" means a public utility as defined in Section 54-2-1, and a telecommunications corporation as defined in Section 54-8b-2.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities within the Department of Commerce of the State of Utah.

R746-400-4. Reports to the Commission.

A. Report Form Purposes -- The Division shall design report forms that will provide information from reporting entities useful to the Commission and the Division in performing their statutory duties and to administer Commission supervised or directed programs. These forms shall include, but are not limited to, reports used to provide information on a reporting entity's monthly and annual operations, reports concerning an entity's gross revenues used to calculate the public utilities' regulation fee under Section 54-5-2, reports and supplements used to prepare the Commission's annual report to the Governor and Legislature required by Subsection 54-8b-2.5, reports used in the administration the State of Utah Universal Public Telecommunications Service Support Fund, lifeline programs, and telephone relay program.

B. Acceptable Report Forms --

1. The Division shall make report forms available to all reporting entities. Applicable report forms for any report shall be available at least 60 days prior to the date the report is due to be completed by a reporting entity. The Division shall design report forms that clearly state the due date for the report and shall provide, as needed, directions, definitions and other information that will assist a reporting entity in completing a report form.

2. The Division may accept a reporting entity's request that an alternative report form or document, used to furnish information to federal government agencies, other agencies of this or other states, or for the entity's other needs or uses, be used in lieu of all or part of a Commission report form. The Division may require that the alternative report form or document be supplemented with other or additional information in order to obtain the same information as sought in the Utah report form.

C. Report Certification and Corrections -- Each report shall be signed by a responsible officer of the public utility certifying that the report is true and correct. If a reporting entity learns that any portion of a filed report is incorrect, it shall file corrected pages as soon as possible with an explanation of the corrections. The utility shall file an electronic copy of the report, in addition to a paper copy, if the report is prepared electronically.

R746-400-5. Copies of Reports to Federal Government**Agencies.**

Upon request of the Division, each reporting entity shall provide the Division with a copy of any report filed with the following federal government agencies: Federal Energy Regulatory Commission, Federal Communications Commission, Rural Utility Services, Securities and Exchange Commission, and Surface Transportation Board. The reporting entity shall provide to the Division the requested reports within 10 days of receiving the Division's request.

R746-400-6. Copies of Reports to Shareholders and Audited Financial Reports.

A. Annual Report -- Each reporting entity shall provide the Division with a copy of any annual report sent to shareholders within 10 days of its issuance.

B. Audited Financial Statements -- Upon request of the Division, a reporting entity shall provide the Division with a copy of any audited financial statements, including the opinion statements of the auditor, if the statements are prepared for the reporting entity.

R746-400-7. Confidentiality.

A. Public Information -- Reports filed pursuant to this rule shall be considered public information unless otherwise provided.

B. Protected Documents -- If a reporting entity desires that any report, copy or document, or any portion thereof, required by this rule, be treated in any manner other than as public information, it shall comply with the provisions of the Government Records Access and Management Act, Title 63G, Chapter 2, and provide a written claim of confidentiality and the reasons supporting that claim. If the records, or portions thereof, are classified as protected under GRAMA, the Division shall maintain the confidential reports in a separate file and disclosure to anyone outside of the Commission, its staff, the Division, and the staff of the Committee of Consumer Services, shall only be as allowed by GRAMA.

KEY: public utilities, reports, rules and procedures**October 30, 2002****54-2-1****Notice of Continuation June 13, 2012****54-8b-2****54-5-2****63G-2-101**

R850. School and Institutional Trust Lands, Administration.**R850-4. Application Fees and Assessments.****R850-4-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

R850-4-200. Fee Schedule.

The fees are established by the agency pursuant to policy set by the School and Institutional Trust Lands Board of Trustees. A copy of the fee schedule is available at the School and Institutional Trust Lands Administration offices listed in R850-6-200(2)(a).

R850-4-300. Fee Waivers.

1. The director may waive any fees when appropriate and when doing so would not be adverse to the interests of the beneficiaries.

2. The director shall provide a semi-annual report to the Board of Trustees of any fees waived and the reasons for waiving the fees.

KEY: administrative procedure, filing fees, rates

May 16, 2006

53C-1-302(1)(a)(ii)

Notice of Continuation June 27, 2012

**R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.**

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A 6% penalty and \$30 return check charge will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the

agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or \$30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may be returned and may be made subject to the penalty provisions of this rule.

i) Any report including adjustments to reporting periods more than 24 months prior to the current report period.

ii) Amendments to prior report periods creating a net adjustment of less than \$10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Minutes, plus 4%. However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than \$30.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permited premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive

settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: administrative procedures

June 21, 2007

53C-1-302(1)(a)(ii)

Notice of Continuation June 27, 2012

R850. School and Institutional Trust Lands, Administration.**R850-6. Government Records Access and Management.****R850-6-100. Purposes and Authority.**

1. This rule provides procedures for appropriate access to agency records.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution; and Sections 63A-12-104, 63G-2-204, 63G-2-603, 53C-1-201(3)(a)(i)(A), and 53C-2-102.

R850-6-200. Definitions.

1. Terms used in this rule are defined in Section 63G-2-103.

2. In addition:

(a) Records coordinators: individuals designated by the agency director to coordinate records access requests and to assist the public in gaining access to records maintained by the agency. Records coordinators are located in the following:

- i) Salt Lake Office Public Room, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.
- ii) Northern Area Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.
- iii) Central Area Office, 130 N Main St, Richfield, UT 84701.
- iv) Southwestern Area Office, 359 East Riverside Drive, St. George, UT 84790.
- v) Southeastern Area Office, 1165 South Highway 191, Suite 5, Moab, UT 84532.

R850-6-300. Allocation of Responsibility Within the Agency.

The agency is considered a governmental entity and the director of the agency is considered the head of the government entity.

R850-6-400. Requests for Access.

1. Request for access to records shall be on a form provided by the agency or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The agency shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63G-2-204(1), the agency may, at its discretion, waive the requirement for a written request if the records requested are public, the records are readily accessible and the request is filled promptly by providing access or copying at the time the request is made.

R850-6-500. Other Requests.

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63G-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of a document pertaining to him as maintained by the agency pursuant to Section 63G-2-603.

(a) The request to amend shall be made in writing to the records officer.

(b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63G-2-309. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the agency should be protected under Section 53C-2-102.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the agency is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the agency agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

- i) the lease is terminated and the agency believes the release of the information is not detrimental to the trust; or
- ii) the lessee or its successor in interest ceases to exist as an entity and the agency believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The agency may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the agency, provided further that the confidentiality of such information is safeguarded.

R850-6-600. Denials.

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63G-2-205(2).

R850-6-700. Appeal of Determination.

1. Any person aggrieved by an access or status request determination including a person not a party to the agency proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the agency or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought.

2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63G-2-204, 63G-2-603, and 53C-2-102, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the agency in prohibiting access to the record.

R850-6-800. Fees.

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R850-6-200, Definitions.

KEY: GRAMA, government documents, public records

1994

Notice of Continuation June 27, 2012

53C-1-201(3)(a)(i)(A)

53C-2-102

R850. School and Institutional Trust Lands, Administration.**R850-30. Special Use Leases.****R850-30-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to establish criteria for the leasing of trust lands.

R850-30-150. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals to lease trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
2. Evaluate and respond to comments received through the RDCC process; and
3. Evaluate and respond to any comments received through the request for proposal process pursuant to R850-30-310 or the solicitation process pursuant to R850-30-500(2), as applicable.

R850-30-200. Terms of Leases.

1. The agency may issue special use leases for surface uses of trust lands, excluding grazing, for terms of up to 51 years.
2. In exceptional cases, the agency may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the trust beneficiaries.
3. The agency shall issue leases for the term most consistent with land management objectives found in R850-2. The term of a lease shall not normally be for a period longer than specified below for a particular lease type.
 - (a) Military: 10 years
 - (b) Agricultural: 20 years
 - (c) Telecommunications: 20 years
 - (d) Commercial: 51 years
 - (e) Industrial: 51 years
 - (f) Residential: 51 years
 - (g) Governmental (Other than Military): 51 years.

R850-30-300. Categories of Special Use Leases.

Special use leases are classified according to the following categories.

1. Commercial: use of trust land for a restaurant, service station, boating facilities, motels, retail businesses and similar uses may be included in this category.
2. Industrial: use of trust land for testing sites, mining or extraction facilities, manufacturing plants and similar uses may be included in this category.
3. Residential: use of trust land for a private, permanent home and legal domicile may be included in this category.
4. Agricultural: use of trust land for crop production, improved pasture lands, irrigation improvements and similar uses, excluding grazing, may be included in this category.
5. Telecommunications: use of trust land for the operation of towers and building for telecommunication purposes may be included in this category.
6. Governmental: use of trust land for water storage tanks, well sites, reservoirs, gun ranges and similar uses by a governmental agency may be included in this category.

R850-30-310. Requests for Proposals.

1. The agency may issue a request for proposals (RFP) for any lands on which the director has determined the potential for development exists.
2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected records status until the director selects the preferred proposal.
3. Proposals may be evaluated using the following criteria:
 - (a) Income potential;

(b) Ability of proposed use to enhance adjacent trust lands;

- (c) Proposed timetable for development;
- (d) Ability of applicant to perform satisfactorily;
- (e) Desirability of proposed use; and
- (f) Any other criterion deemed appropriate by the director.

4. Requests for proposals shall be advertised through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located as well as any other advertising methods the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.

5. Proposals shall contain a non-refundable application and review fee as specified in the RFP.

6. Applicants selected in an RFP process shall be exempt from the application process set forth in R850-30-500.

R850-30-400. Lease Rates.

1. Lease rates shall be based on the market value and income producing capability of the subject property and may be determined by:

- (a) multiplying the market value of the subject property by the current agency-determined interest rate;
- (b) the evaluation and use of comparable lease data; or
- (c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable.

2. The agency may base lease rentals on a value other than the market value of the subject property, provided that the director determines such is in the best interest of the beneficiaries and provided that the lease contains a clause whereby the agency may terminate the lease prior to the end of the lease term.

3. In addition to lease rental, the agency may require the payment of percentage rents.

4. The agency, pursuant to board policy, may establish a minimum lease rental based on the costs incurred in administering the leases, and a desired minimum rate of return.

5. Lease Review Procedures and Rental Adjustments for Special Use Leases.

(a) Special use leases shall be reviewed by the agency as of the effective date specified in the respective lease and such review may result in an adjustment of base rental.

(b) Adjustments in base rentals may be based upon changes in market value including appreciation of the subject properties, changes in established indices, or other methods which may be appropriate and in the best interest of the trust beneficiaries. The determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

(c) When using established indices, the rate of adjustment shall be based on the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.

(d) The index used in the review may be the applicable component of the CPI-U or any other index determined by the agency to be appropriate.

(e) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible by \$10.

(f) The director may suspend, defer, or waive the adjustment of base rentals in specific instances, based on a written finding that the suspension, deferral, or waiver is in the

best interest of the trust beneficiaries.

R850-30-500. Application Procedures.

1. Applications for special use leases shall indicate the appropriate lease category, as set forth in R850-30-300.

2. Solicitation of Competing Applications.

(a) Upon acceptance by the director of a completed special use lease application, the agency shall solicit competing lease applications and, if appropriate, sales applications. The solicitation of competing applications may be waived by the director based on a written finding that the waiver is in the best interest of the trust beneficiaries.

(b) The following classes of leases are exempt from the requirements of R850-30-500(2):

i) Communication sites.

ii) Mineral and oil and gas extraction facilities when the agency does not own the mineral estate.

(c) Competing applications shall be solicited through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located.

(d) Copies of the notice shall be sent by certified mail at least 30 days prior to the selection of the successful applicant to lessees/permittees of record on the subject property and adjoining landowners as shown on county records.

(e) Notices shall also be sent to the appropriate county authority in which the subject property is located with a request to have the notice posted in the local governmental administrative building or courthouses.

(f) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the parcel that does not violate the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.

(g) The agency may solicit applications on trust lands when no application has been received by advertising a parcel pursuant to the process described in R850-30-500(2) or any other means, when in the best interest of the trust beneficiaries.

R850-30-510. Preferred Application Determination.

1. At the conclusion of the advertising and notification process conducted pursuant to R850-30-500(2), the agency may select the preferred application using either of the following processes. The director shall have full discretion to select which process to use:

(a) Sealed Bid Process.

i) The agency shall allow all applicants at least 20 days from the date of the agency's mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing a proposal to lease, purchase or exchange the subject parcel.

ii) The agency may reject those applications for which a proposal is not submitted within the prescribed time period.

iii) A sealed bid proposal for a lease shall contain the first year's rental unless such requirement is waived by the director. A sealed bid proposal for a sale shall contain funds in the amount of 10% of the offer to purchase. These deposits are refundable if the applicant is not the successful applicant or if the applicant withdraws the application prior to an agency decision.

iv) Competing proposals may be evaluated using the following criteria:

A) Income potential;

B) Ability of proposed use to enhance adjacent trust lands;

C) Proposed timetable for development;

D) Ability of applicant to perform satisfactorily;

E) Desirability of proposed use; and

F) Any other criterion deemed appropriate by the director.

b. Negotiation Process.

i) The director or his designee may invite each qualified applicant or interested person to meet with the agency and present its proposal for the use of the subject property. The director or his designee may also invite persons other than those responding to the initial solicitation to meet with the agency for the purpose of providing information or making a proposal. The director shall have full authority to:

A) offer counter-proposals;

B) negotiate with any or all of the applicants or interested persons to create a proposal which best satisfies the objectives of R850-2-200;

C) terminate the negotiation process entirely; or

D) require the applicants or interested persons to proceed through the process described in R850-30-500(2).

2. If the preferred application is for a lease, it shall be reviewed in accordance with R850-30-550. If the preferred application is for a sale, it shall be reviewed pursuant to R850-80-500. If the preferred application is for an exchange, it shall be reviewed pursuant to R850-90-200.

R850-30-550. Lease Determination Procedures.

1. The director shall not lease trust lands when such lease:

(a) would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;

(b) would create significant obstacles to future mineral development; or

(c) would foreclose future development or management options which would likely result in greater long term economic benefit.

R850-30-600. Special Use Lease Provisions.

Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202 and the following provisions: the rights of the lessee; the rights reserved to the lessor, including the right to review the lease to ensure compliance with the terms and conditions of the lease; the term of the lease; annual rentals and percentage rents, if applicable; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability associated with the actions of the lessee on the subject property.

R850-30-800. Bonding Provisions.

1. At the time of initial lease payment, the lessee may be required to post with the agency performance, payment, and reclamation bonds in the form and amount and subject to any terms and conditions as may be determined by the agency to assure compliance with all terms and conditions of the lease.

2. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided lessor first gives lessee 30 days written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. The agency shall not be responsible for any investment returns on cash deposits; or

(c) Other forms of surety as may be acceptable to the agency.

R850-30-900. Lease Assignments and Subleases.

1. Any special use lease may be assigned or subleased to any person or entity qualified to hold a lease on trust land, provided, however, that all assignments and subleases are approved by the director; and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is voidable at the director's option.

2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment shall be a sufficient legal instrument, properly executed and acknowledged, with the lease number, the land involved, and the name and address of the assignee, and the interest transferred clearly indicated.

4. Additional occupants of a telecommunication facility shall abide by all the requirements of this rule. In addition, the agency may charge each communication site sublessee an amount based on the then current market rental value of the premises, and such other factors as may reasonably bear upon the suitability of the sublessee as a tenant of the premises.

5. As a condition of the approval of an assignment or sublease the agency shall require:

(a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(b) The assignee or sublessee to be satisfactory to the agency.

R850-30-1000. Lease Amendments.

1. Special use leases may be amended as to the following terms and conditions upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with R850-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rate of rental or percentage rent;

(d) Due date of rental or percentage rent; and

(e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 150% of the original acreage. If the total amended acreage exceeds 150% of the original acreage, the amendment shall be advertised pursuant to R850-30-500(2).

KEY: administrative procedures, leases, trust land management, request for proposals

October 9, 2007

53C-1-302(1)(a)(ii)

Notice of Continuation June 27, 2012

53C-2-201(1)(a)

53C-4-101(1)

53C-4-202

R850. School and Institutional Trust Lands, Administration.**R850-40. Easements.****R850-40-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

R850-40-150. Planning.

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and
2. Evaluate and respond to comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice is intended to provide information to any responsible authority wishing to assert a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

- (a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 90 days from the date of the notice within which to submit an application.

- (b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry. Other responsible authorities shall have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized easement or right-of-entry, the agency shall evaluate the request

pursuant to the fiduciary responsibilities of the agency. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 30 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.

R850-40-300. Easement Acquisition.

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

- (a) prescription,
- (b) adverse possession, or
- (c) any other legal doctrine except as provided by statute.

R850-40-400. Easement Charges.

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

R850-40-500. Surveys.

1. Anyone desiring to perform a survey on trust land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement.

2. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements.

3. The notice shall also contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director.

4. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

R850-40-600. Minimum Charges for Easements.

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

R850-40-700. Application Procedures.

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period

may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director may consider the following factors:

A) the fee established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

R850-40-1700. Termination of Easement.

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

1. In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the

easement as provided in R850-4.

2. This administrative charge shall not be construed as rent.

3. In lieu of this charge, the agency may allow a grantee to pay a one-time negotiated charge.

KEY: natural resources, management, surveys, administrative procedures

October 22, 2009

53C-1-302

Notice of Continuation June 27, 2012

53C-2-201(1)(a)

53C-4-203

R850. School and Institutional Trust Lands, Administration.**R850-50. Range Management.****R850-50-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits within this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) Evaluation of and response to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

R850-50-200. Grazing Management.

Management of trust lands for grazing purposes is based upon grazing capacity which permits optimum forage utilization and seeks to maintain or improve range conditions. Grazing capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend and climatic conditions.

R850-50-300. Applications.

Unless land has been withdrawn from grazing or has been determined to be unsuitable for grazing, applications shall be accepted for grazing rights upon all trust lands not otherwise subject to a grazing permit.

School and institutional trust lands may be declared unsuitable for grazing if it is determined that range conditions are incapable of supporting economic grazing practices or if grazing would substantially interfere with another trust land use that is better able to provide for the support of the beneficiaries.

R850-50-400. Permit Approval Process.

Applications shall be accepted on lands available for permitting under R850-50-300 or upon termination of an existing permit as follows:

1. On trust lands that are available for grazing, but are not subject to an existing permit, applications may be solicited through advertising or any other method the agency determines is appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

3. If no competing applications are received, the person holding the expiring grazing permit shall have the right to renew the permit by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application shall

do so on forms acceptable to the agency. Forms may be acquired at the offices listed in R850-6-200(2)(b). Applications shall include payment in the amount of the non-refundable application fee, and the one-time bonus bid. Bids shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

5. Applications shall be evaluated by the agency and shall be accepted only if the agency determines that the applicant's grazing activity shall not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation adjoining permittees and lessees, adjoining property owners, or adjoining federal permittees shall be considered acceptable as competing applicants unless specific problems are clearly demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees of trust lands in the area, shall nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability for a grazing permit, the agency may consider the applicant's ability to maintain any water rights appurtenant to the lands described in the application.

6. An existing permittee shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest competing application.

R850-50-500. AUM Assessments and Annual Adjustments.

An annual assessment shall be charged for each AUM used by livestock on trust lands. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

R850-50-600. Grazing Permit Terms.

No grazing permit shall be issued for a period of time exceeding 15 years. The agency may at its discretion, however, extend the period of time beyond 15 years if it determines that substantial range improvements approved pursuant to R850-50-1100 warrant such an extension. Every grazing permit executed under these rules shall include the following terms and conditions:

1. Terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed.

2. Terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses.

3. Other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

4. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days notice by certified mail to the permittee for a violation of the terms of the permit, or of these rules, or upon the issuance of a lease or permit, the purpose of which the agency has determined to be a higher and better use, or disposal of the trust land. Failure to pay the required rental within the time prescribed shall automatically work a forfeiture and cancellation of the permits and all rights thereunder.

5. Locked gates on trust land without written approval are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

6. Supplemental livestock feeding on trust grazing lease lands may be permitted subject to written authorization by the agency with the designation of a specific area, length of time,

number and class of livestock, and subject to a determination that this shall not inflict long term damage upon the land. The agency may assess an additional fee for authorized supplemental feeding. Emergency supplemental feeding shall be allowed for ten days prior to notification.

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-50-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the advertisement does not bring forth any competing applications, or if the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees including a fee equal to the reinstatement fee.

R850-50-800. Grazing Permits--Legal Effect.

Grazing permits transfer no right, title, or interest in any lands or resources held by the agency, nor any exclusive right of possession and grant only the authorized utilization of forage.

R850-50-900. Non-Use Provisions.

The granting of non-use for trust lands shall be at the discretion of the agency. The following criteria shall apply to all non-use requests:

1. The permittee shall submit an application for non-use in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency. The request shall be accompanied by the applicable application fee and by any appropriate documentation which is the basis for the request. In the event of approved grazing non-use, fees shall not be waived or refunded but shall be applied to the next year.
2. Non-use shall not be approved for periods of time exceeding one year.
3. Non-use may be approved in times of emergency conditions.
4. Non-use for personal convenience with no payment of fees shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, partially assign, sublease, mortgage, pledge, or otherwise transfer, dispose, or encumber any interest in the permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and cancellation of the permit.
2. An annual assessment equal to 50% of the difference between the base AUM assessment established under R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a \$1.00 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease. The approval of any sublease shall be subject to the following restrictions:
 - (a) Consent for subleasing shall only be given if the sublease is compatible with the best interests of the beneficiaries and long-term management of the land and will not unreasonably conflict with the interests of other permittees in the area.
 - (b) Subleases in-lieu of a collateral assignment shall not be approved.
 - (c) No sublease shall be effective for more than five years.
3. An additional fee based upon either the fair market value of the permit or a flat fee per AUM may be charged for the approval of any assignment or partial assignment.
4. Mortgage agreements or collateral assignments are for the convenience of the permittee. The term of a mortgage agreement or collateral assignment shall not exceed the remaining term of the permit. If the grazing permit is renewed,

the permittee may also renew the mortgage agreement or collateral assignment of the permit pursuant to these rules.

R850-50-1100. Range Improvement Projects.

1. Range Improvement Projects shall be submitted for approval on appropriate application forms. Range Improvement Projects shall be approved or denied by the agency based on a written finding.
2. All range improvement activity shall be approved by the agency in writing before construction begins. Line cabins and similar structures shall not be authorized as range improvement projects and shall be authorized by a special use lease pursuant to R850-30.
3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only in extraordinary circumstances.
4. Range improvements constructed or placed upon trust land without prior approval shall become the property of the agency.
5. Range improvements shall not be authorized if they would be:
 - (a) located on a parcel that the agency has determined has potential for sale, lease or exchange and the possibility exists that improvements may encumber these actions.
 - (b) located on a parcel designated for disposal.
 - (c) a project or structure that does not fill a critical need or enhance the value of the resource.
6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.
7. Authorized Range Improvement Projects shall be depreciated using schedules consistent with typical schedules published by the USDA Soil Conservation Service. In the event of disposal of the property, the issuance of a permit to a competing applicant, or withdrawal of the property, the permittee shall receive no more than the original cost minus the indicated depreciation costs; or in the alternative, shall be allowed 90 days to remove improvements pursuant to section 53C-4-202(6).
8. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased-in at 20% per year.
9. The agency may participate in cost-sharing of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.
10. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

R850-50-1200. Additional Leases.

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

R850-50-1300. Rights Reserved to the Agency.

In all grazing permits the agency shall expressly reserve the right to:

1. issue special use leases, timber sales, materials permits, easements, rights-of-entry and any other interest in the trust land.
2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment.
3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time.
4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land.
5. require that all water rights on trust land be filed in the name of the trust and to require express written approval prior to the conveyance of water off trust land.
6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law.
7. close roads for the purpose of range or road protection, or other administrative purposes.
8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7).
9. terminate a grazing permit in order to facilitate higher and better uses of trust lands.

R850-50-1400. Trespass.

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include, but are not limited to:
 - (a) The use of forage at times and at places not authorized in the permit.
 - (b) The placement of numbers of livestock on the trust land which, if left on the trust land for the length of time allowed in the permit, would result in forage being used in excess of that authorized by the permit.
 - (c) Grazing or trailing livestock on or across trust land without a valid permit or right-of-entry.
 - (d) The dumping of garbage or any other material on the trust land.
2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock on trust lands to recover damages for lost forage or other values.

R850-50-1500. Trailing Livestock Across Trust Land.

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.
2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.
3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, not to exceed two consecutive days of the trailing.

R850-50-1600. Modified Grazing Permit.

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include, but are not limited to, uses authorized under R850-30-300(1)(d), camps, corrals, feed yards, irrigated livestock pastures, or other related uses.
2. Modified grazing permits may be approved pursuant to the following process:
 - (a) Applications for modified grazing permits shall be submitted pursuant to R850-3.
 - (b) Applications, if accepted, shall be accompanied with

an application fee equal to the application fee for special use leases.

(c) Applications shall be evaluated pursuant to R850-3-400 and R850-50-400.

3. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to cancellation pursuant to R850-50-600(4).

(c) Annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(4).

(d) Upon cancellation of the modified grazing permit:

i) the permittee shall be allowed 90 days to remove approved temporary range improvements; and

ii) at the discretion of the director, the agency may reimburse the permittee for approved permanent range improvements pursuant to R850-50-1100; or

iii) the permittee shall be allowed 90 days to remove approved permanent range improvements.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

KEY: administrative procedures, range management

June 7, 2010

Notice of Continuation June 27, 2012

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

53C-5-102

R850. School and Institutional Trust Lands, Administration.**R850-60. Cultural Resources.****R850-60-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses on any historic property and provide the State Historic Preservation Officer with a written evaluation of the effect of the expenditure or undertaking on the historic property. This rule also outlines the manner by which the agency shall authorize pursuant to Section 9-8-305(3)(c) surveys and excavations on trust lands.

R850-60-200. Definitions.

For purposes of this rule:

1. "Area of potential effects" means the trust lands identified by the agency within which a land use activity will take place that has the potential to cause changes in the character or use of historic properties, if any such properties exist on the surface estate of such trust lands.
2. "Discovery property" means any site or archaeological resource that is encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.
3. "Expenditure" means use of the agency's funds for an "undertaking" as defined herein.
4. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.
5. "Undertaking" means any trust land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

R850-60-300. Authorization of Cultural Resource Work.

1. No person shall alter, remove, injure or destroy antiquities or cultural resources on trust lands, without written permission from the agency.
2. For purposes of Section 76-6-902 "consent" to alter, remove, injure or destroy antiquities or cultural resources covered by a restrictive deed covenant means either:
 - (a) an amendment to the certificate of sale or patent evincing the agency's release of the deed covenant; or
 - (b) other specific written permission and an archaeological permit issued under Section 9-8-305.
3. No person shall conduct an archaeological survey or excavate (as defined by Section 9-8-302) any cultural resources on trust lands without first obtaining a permit under Section 9-8-305 and written authorization from the agency that fulfills the requirement set forth in R850-41-500.
 - (a) A condition of such written authorization shall be that the principal investigator, as defined by Section 9-8-302, shall provide the agency with a copy of any records resulting from all such investigations on trust lands that are conducted under the written authorization.
 - (b) Non-professional documentation of the location, nature, extent and condition of cultural resources on trust lands shall also be subject to R850-60-300(3)(a).
4. A person found in violation of R850-60-300 may be subject to civil and criminal penalties under Sections 76-6-903 and 53C-2-301.

R850-60-400. Archaeological Excavation Permits.

1. Subsection 9-8-305(3)(c) allows for delegation of authority to issue excavation permits to agencies that meet

specified criteria. Should the agency obtain such delegation, it shall issue excavation permits for sites on trust lands in accordance with Section 9-8-305 and Rule R694-1.

2. Applications for excavation permits shall be made on forms created and maintained by the Public Lands Policy Coordination Office and submitted to the agency in a timely manner and with enough lead time to allow for review and modification of the excavation plan or research design for the proposed investigation.

(a) The agency shall respond to an application for excavation permit in a timely manner.

(b) The agency may request information other than what is required by Section 9-8-305 and Rule R694.

3. All excavation permits shall be issued with the following requirements:

(a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.

(b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section 76-9-704 and Rule R850-61.

(c) The agency may include other requirements as necessary.

4. Unless the proposed excavation is being conducted to facilitate execution of an expenditure or undertaking that is already the subject of Section 9-8-404 compliance, then the issuance of an excavation permit by the agency shall be considered an undertaking for purposes of Section 9-8-404.

R850-60-500. Identifying Historic Properties.

1. Following the agency's determination that a proposed trust land use constitutes an undertaking, the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall collect and review existing information about historic properties that may be located within the area of potential effects. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, other state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this review, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.

R850-60-600. Identification Responsibilities.

1. The agency may conduct cultural resource surveys on trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those cultural resource surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct cultural resource surveys for mineral exploration or development, for easements, for surface use leases, or for projects where federal, other state or local government agencies are the applicants.

2. The director shall decide whether a cultural resource survey shall be conducted on behalf of the agency, by whom it shall be conducted, and the scope and extent to which it shall be conducted.

3. The director shall decide who will pay the cost of the cultural resource survey, when that cost shall be incurred, how much of the total cost shall be recovered, and from whom it shall be recovered. The agency may request from an applicant or interested party payment of the cost of a cultural resource

survey prior to the survey being conducted.

(a) If the party providing payment for the cultural resource survey is successful in his or her bid for the use or purchase of the trust land in question, then the agency shall not reimburse the bidder for the cost of the survey.

(b) If the party providing payment for the cultural resource survey is unsuccessful in his or her bid for the trust land in question, the agency shall reimburse that party the same amount the agency received as payment for the cultural resource survey.

R850-60-700. Evaluating Eligibility.

1. The agency shall make a determination of the eligibility for the National Register for each site identified within the undertaking's area of potential effects. The passage of time, changes in the nature of the undertaking or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible for purposes of Section 9-8-404.

2. If the agency finds that either there are no historic properties present within the area of potential effects or there are historic properties present but the undertaking will have no effect on them as defined herein, the agency shall make a finding of "No Historic Properties Affected" and provide the SHPO with a written evaluation in support of that finding. If the SHPO does not reply within the time specified in Subsection 9-8-404(3)(a) or within the time period agreed to by the parties, then the agency may presume that the SHPO concurs with the agency.

3. If the agency finds that there are historic properties within the area of potential effects and the undertaking may cause changes in the character or use of historic properties, the agency shall make an assessment of effect in accordance with R850-60-800.

R850-60-800. Assessing Effects.

1. The agency shall assess the effect of a proposed trust land use or disposition on historic properties by applying the following:

(a) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(b) Examples of adverse effects. Adverse effects on historic properties include:

- i) physical destruction of or damage to all or part of the property;
- ii) alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation;
- iii) removal of the property from its historic location;
- iv) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property; or
- v) disposal of trust lands without adequate restrictions or conditions to ensure long-term preservation of the property's historic significance.

(c) Finding of no adverse effect. The agency may make a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (1)(a) of this section or the undertaking is modified or conditions are imposed to avoid adverse effects.

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within the time frame set forth in Section 9-8-404, the

SHPO is presumed to agree with the agency's finding of effect.

3. The director may establish treatment options in consultation with the SHPO that may include:

- (a) archaeological data recovery;
- (b) "alternative" or "creative" mitigation;
- (c) physical treatment to alleviate or minimize the adverse effect(s);
- (d) historic property documentation; or
- (e) simple case documentation.

The director will make the final decision regarding any treatment options.

R850-60-900. Discoveries.

1. Upon discovering a site, a user of trust lands shall immediately cease all activities until such time as the discovery has been evaluated and treated to the director's satisfaction.

R850-60-1000. Emergency Undertakings.

The director may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

R850-60-1100. Programmatic Agreements.

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

R850-60-1200. Records.

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All permittees preparing similar data or conducting work in accordance with R850-60-400 shall furnish two sets of the results of their work, one of which the agency will submit to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Subsection 63G-2-305(26).

KEY: cultural resources

January 24, 2011	53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2012	53C-2-201(1)(a)
	53C-2-301
	9-8-305
	9-8-404

R850. School and Institutional Trust Lands, Administration.**R850-80. Sale of Trust Lands.****R850-80-100. 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-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to prescribe the terms and conditions for the sale of trust land.

R850-80-150. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
2. Evaluate and respond to comments received through the RDCC process; and
3. Evaluate any comments received through the notice and advertising processes conducted pursuant to R850-80-600 and R850-80-615.

R850-80-200. Sale of Trust Lands.

The agency may sell trust land if the agency determines that the sale of the land would be in the best interest of the trust beneficiaries and provided that the land is sold for no less than fair market value.

R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry and Existing Rights of Record.

Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-40-250(2) to evaluate whether any temporary easement or right-of-entry exists on the subject property. The agency shall also evaluate the presence and impact of other valid existing rights of record on the subject property prior to sale, and take any appropriate steps to mitigate adverse impacts resulting from such rights.

R850-80-300. Sales Initiation Process.

The sales process shall be initiated by an agency determination to evaluate the appropriateness of the sale of a particular parcel of trust land. The evaluation shall be undertaken in accordance with R850-80-500. In determining the appropriateness of a parcel of trust land for sale, the agency may consider nominations by interested parties.

R850-80-400. Sales Deposits.

If the agency evaluates a parcel of trust land for sale due to a nomination by an interested party, the person making such nomination may be required to deposit funds in an amount determined by the agency to be used to offset costs incurred in preparing the parcel for sale. In the event the person making the deposit is the successful purchaser of such land, the deposit shall be a credit against any fees charged by the agency to the purchaser for preparing the land for sale. In the event the person making the deposit is not the successful purchaser of such land or the land is not offered for sale, the deposit shall be refunded.

R850-80-500. Sale Determination Procedures.

1. Preliminary Analysis
 - (a) The director shall not offer trust land for sale when:
 - i) the subject property is appreciating in value at a rate in excess of the anticipated return from the investment of the principle;
 - ii) there is no evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;
 - iii) the sale would create obstacles to future mineral development on trust lands; or
 - iv) in the sole discretion of the director, it has been

determined that the sale would foreclose future development or management options which would likely result in greater long term economic benefit.

2. Market Analysis

(a) The agency shall conduct a market analysis of a proposed sale of trust land which shall include an estimate of value. If the estimate of value is determined by an appraisal, the cost of the appraisal shall be borne by the successful purchaser.

(b) The market analysis may also include the evaluation of:

- i) real estate trends;
- ii) market demand;
- iii) opportunity costs including potential for appreciation;

and

- iv) associated management costs of retention.

3. Sale Determination

(a) The director may take into account any factor and circumstances deemed relevant, as well as any applicable policy adopted by the board, when making a determination as to whether to sell trust land. Prior to the sale of trust land, the agency shall take prudent and cost-effective actions to increase the value of the land.

(b) If a sale is determined to be appropriate, the agency shall determine the minimum acceptable selling price of the subject property, which minimum acceptable selling price shall not be less than fair market value. This determination may include information from any of the following:

- i) the appraisal;
- ii) the data gathered pursuant to R850-80-500(2); and
- iii) any other information which the agency considers relevant.

(c) The minimum acceptable selling price shall be provided protected records status until the sale is consummated, unless otherwise ordered by the director.

R850-80-550. Methods of Sale.

The agency may sell land or assets using one of the methods described below:

1. A public sale pursuant to R850-80-610, or
2. A negotiated sale pursuant to R850-80-620.

R850-80-600. Public Sale Notice and Advertising.

1. At least 30 days prior to a public sale, notice shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) the date, time, and location where the sale will be held;

(b) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(c) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise public sales using any other methods the director has determined may increase the potential for additional competition at the sale.

R850-80-610. Public Sale Auctions.

Public sale auctions shall be conducted as follows:

1. Sealed bids shall be accepted until the day prior to the auction by the agency, or on the day of the auction by the officer conducting the auction.

2. A sealed bid shall contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the

subject property and may be required to consist of certified funds. Bids and bid deposits shall be a specified dollar amount. The agency reserves the right to reject any bid however submitted.

3. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

4. The persons submitting the three highest bids shall be allowed to enter into oral bidding, which shall begin at the amount of the highest sealed bid, subject to those terms and conditions of R850-80-610(5). Those persons who submit a sealed bid that is within 20% of the third highest sealed bid shall also be allowed to participate in oral bidding, subject to those terms and conditions of R850-80-610(5).

5. In the event the minimum selling price of a property is disclosed prior to the auction, persons who bid less than the disclosed minimum selling price shall be disqualified and shall not be eligible for oral bidding, even if such bids would otherwise meet those requirements in R850-80-610(4) or (6).

6. Only current grazing permittees, materials permittees and special use lessees on the subject property who submit sealed bids shall automatically qualify to enter into oral bidding, subject to those terms and conditions of R850-80-610(5).

7. All bids, whether sealed or oral, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been read, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the agency at law or equity.

8. If, after the first round of oral bidding, no bid is submitted which equals or exceeds the agency's minimum selling price, then the sale shall not be made except as provided below.

(a) At the discretion of the officer conducting the sale, qualified bidders may enter into additional rounds of oral bidding, starting at the high bid reached in the previous round.

(b) To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum selling price.

9. At the conclusion of the auction, the agency shall collect from the successful bidder:

(a) a down payment in the amount required by the sale notice;

(b) interest on the unpaid balance from the date of sale to the first day of the following month; and

(c) reimbursement of costs incurred in preparing the parcel for sale, which may include costs incurred for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

10. The first payment shall be due one year from the first day of the month following the sale; subsequent payments shall be due on the first day of the same month each year thereafter until the balance is paid in full.

11. Amounts paid in excess of the current obligations shall be applied to principal. The unpaid balance, plus interest to date, may be paid in full at any time without penalty.

12. If the successful bidder defaults on the down payment or otherwise fails to meet the requirements of R850-80-610(9), the property may, upon approval by the director, be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale shall meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder shall have 30 days from the date of the agency's offer to submit the amounts required under R850-80-610(9).

13. The interest rate which shall be charged against any unpaid balance at the conclusion of the auction shall be the prime rate, as determined by the agency on the date the public sale is approved by the director, plus 2 1/2% (Prime Rate + 2 1/2%). Interest shall be calculated on a 365-day basis. Every

year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as determined by the agency on the date of billing, plus 2 1/2% (Prime Rate + 2 1/2%).

14. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel.

R850-80-615. Negotiated Sale Notice and Advertising.

1. Prior to an agency decision to initiate a negotiated sale, notice of such shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(b) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise negotiated sales using any other methods the director has determined may increase the potential for additional interest in the subject property.

R850-80-620. Negotiated Sale Procedures.

1. Negotiated sales shall be advertised in the manner set forth in R850-80-615. In the event a competing offer(s) is received, the agency shall evaluate the offers and determine what action is in the best interest of the beneficiaries.

2. The board and affected beneficiary institution(s) shall be provided notice 30 days prior to the sale describing the terms, reasons, and other pertinent facts of the proposed negotiated sale.

3. Board approval of a negotiated sale is required if:

(a) the value of the subject property exceeds \$250,000.00;

(b) the subject property exceeds 320 acres in size; or

(c) additional interested person(s) indicate to the agency an interest in purchasing the subject property.

4. A purchaser of trust land sold at a negotiated sale may be required to reimburse the agency for costs incurred in preparing the parcel for sale, which may include costs for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

R850-80-700. Certificates of Sale.

1. Following a public sale or upon concurrence of the parties in a negotiated sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the subject property, and shall include:

(a) information regarding the amount paid;

(b) the amount due;

(c) the time when the principal and interest shall become due;

(d) the beneficiary of the land;

(e) provisions for remedies the agency may elect in the event of a default, as such remedies are set forth in R850-80-700(8); and

(f) any other terms, covenants, deed restrictions, or conditions which the agency considers appropriate.

2. Certificates of sale must be executed by the purchaser and returned to the agency within 30 days from the date of the

purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice shall be sent to the purchaser giving notice that after 30 days the sale may be canceled with all monies received, including the down-payment, forfeited to the agency. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to cancel a sale of trust land for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the director, and that no assignment is effective until approval is given by the director in writing.

5. An assignment of a certificate of sale shall be consistent with these rules, executed by the assignee and assignor and acknowledged, and shall clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from any obligations under the original certificate of sale.

7. Upon payment in full and surrender of the original certificate of sale for any tract of land sold, or payment in full of any amounts required under R850-80-750(3) for the partial release of property, the agency shall issue a patent to the appropriate person.

8. In the event of a purchaser's default under the certificate of sale, the agency's remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the certificate of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity.

R850-80-750. Partial Releases.

Partial release of property sold under a certificate of sale may be allowed at the discretion of the director. The following conditions shall be met:

1. Access to the remainder of the land must be preserved without restriction;

2. All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate shall have the capacity and capability to service all trust land originally included in the certificate;

3. Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the original price per acre, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of certified funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

4. Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph 3 above shall not include the 10% down payment or any annual installment paid under the certificate of sale;

5. The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released and the remaining land under the certificate; and

6. The value of the remaining land shall not be reduced to an amount less than the remaining principal balance of the

certificate.

KEY: administrative procedures, sales

October 9, 2007

Notice of Continuation June 27, 2012

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

53C-4-101(1)

53C-4-102

53C-4-202(6)

63G-2-305

72-5-203(1)(a)(i)

72-5-203(2)(a)

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. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits 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.

- (2) Appeals to the commission shall include:
 - (a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
 - (b) a copy of the notice required under Section 59-2-919;
 - (c) a copy of the minutes of the board of equalization;
 - (d) a copy of the property record maintained by the assessor;
 - (e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;
 - (f) a copy of the evidence submitted by the parties to the board of equalization;
 - (g) a copy of the petition for redetermination; and
 - (h) a copy of the decision of the board of equalization.

(3) 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.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

- (a) dismissal for lack of jurisdiction;
- (b) dismissal for lack of timeliness;
- (c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) 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 Subsection (5)(a) or (c) was improper;
 - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
 - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
 - (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or
 - (e) a new issue is raised before the commission by a party.
- (9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

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) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

(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 pursuant to Section 59-1-401 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;

(d) UPS 2nd Day Air A.M.;

(e) UPS Worldwide Express Plus; and

(f) 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;	59-2-705
(xv) R861-1A-34, Private Letter Rulings;	59-2-1003
(xvi) R861-1A-38, Class Actions;	59-2-1004
(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and	59-2-1006
(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and	59-2-1007
(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.	59-2-704
(2) Written minutes of a meeting under Subsection (1)(b) shall include:	59-2-924
(a) the date, time, and place of the meeting;	59-7-517
(b) the names of each person present at the meeting;	63G-3-301
(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;	63G-4-102
(d) a record, by commissioner, of each vote taken by the commission;	76-8-502
(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and	76-8-503
(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.	59-2-701
(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:	63G-4-201
(a) properly labeled or identified with the date, time, and place of the meeting; and	63G-4-202
(b) a complete and unedited record of the meeting.	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

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

June 14, 2012	10-1-405
Notice of Continuation January 3, 2012	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

R877. Tax Commission, Motor Vehicle Enforcement.**R877-23V. Motor Vehicle Enforcement.****R877-23V-3. Salesperson Licensed For One Dealer Only Pursuant to Utah Code Ann. Section 41-3-202.**

A. The holder of a dealer's license may not hold an additional license to engage in the activities of a salesperson for another dealer.

B. The requirement that a salesperson may be licensed with only one dealer at a time does not preclude dealership owners from being no-fee salespersons for their own dealerships.

R877-23V-5. Temporary Motor Vehicle Registration Permits and Extension Permits Issued by Dealers Pursuant to Utah Code Ann. Section 41-3-302.

(1) Every dealer desiring to issue temporary permits for the operation of motor vehicles shall make application to the Motor Vehicle Enforcement Division. If the privilege is extended, the dealer will receive a series of permits, consecutively numbered. The numbers shall be recorded by the division and charged to the dealer.

(2) If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

(3) The expiration date on the original permit shall be legible from a distance of 30 feet.

(4) The permit shall be displayed at the rear of the motor vehicle, in a place where the printed information on the permit and the expiration date may be easily seen.

(5) Temporary permits must not be placed in rear windows or permit holders with less than seventy percent light transparency.

(a) If a permit holder is used, it must not cover any of the printed information on the permit, including the expiration date.

(b) If a license plate frame is used in conjunction with a permit holder, it must not cover any printed information or expiration date on the permit.

(c) Temporary permits must be protected from exposure to the weather and conditions that would render them illegible.

(6) If a temporary permit is filled out incorrectly, the sale of the vehicle is rescinded, or for some other reason the permit is unusable, the dealer must return the permit to the Motor Vehicle Enforcement Division, together with the stub, and it will not be considered issued. If the permit is placed on a vehicle and the sale has not been rescinded, the permit will be considered issued and the dealer is liable for the registration fee for the vehicle together with any applicable penalties.

(7) A dealer's temporary permits may be audited at any time and the dealer required to pay for all outstanding permits. The registration fee charged will be for a passenger car unless the dealer is licensed to sell only motorcycles or small trailers.

(a) If the dealer's records indicate that the permit was issued for a vehicle other than that for which the dealer was billed, the dealer must submit the proper fee and penalty.

(b) If the records disclose that the permit was cleared properly, the dealer must furnish the license number of the vehicle for which the permit was issued and the date of issue.

(c) A dealer shall resolve any outstanding permit billings by payment of fees and penalties or by reconciling the permits before any additional permits will be issued to the dealer. This action will not be construed to be a cancellation of a dealer's privilege of issuing temporary permits, but merely a function of the division's routine audit and billing procedure.

(8) The dealer shall keep a written record in numerical sequence of every temporary registration permit issued. This record shall include all of the following information:

(a) the name and address of the person or firm to whom the permit is issued;

(b) a description of the motor vehicle for which it was

issued, including year, make, model, and identification number;

(c) date of issue;

(d) license number;

(e) in the case of a commercial vehicle, the gross laden weight for which it was issued.

(9) In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

(a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

(b) If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

(c) The dealer must return the permit stub to the division within 45 days from the date it is issued.

(d) A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

(10) All extension permits issued by dealers under this rule are considered issued by the division.

(11) When a motor vehicle is sold for registration in another state, the stub portion of the temporary permit shall be filed with the division within ten days from the date of issue, accompanied by the required fee. The sale must be reported in the dealer's monthly report of sale required by Section 41-3-301(2)(b). If the permit stub and the required fee are not postmarked or received by the division within 45 days, a penalty equal to the required fee shall be collected pursuant to Section 41-3-302.

(12) The temporary registration card, attached to the temporary permit, must be detached and given to the customer at the time the temporary permit is issued. This temporary registration card must be kept in the vehicle while the temporary permit is displayed.

R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305.

(1)(a) Transported semitractors are piggy-backed when all of the semitractors being transported are touching the ground.

(b) Each piggy-backed vehicle must have a separate in-transit permit or be properly registered for operation in Utah.

(2) In-transit permits may not be issued for loaded motor vehicles over 12,000 pounds gross laden weight.

(3) A semitractor hauling unlicensed trailers must obtain an in-transit permit for any trailer in contact with the ground.

(4) Subject to Subsections (5) and (6), the following entities may issue in-transit permits:

(a) a licensed dealer that is primarily engaged in the business of auctioning consigned motor vehicles to other dealers or the public; and

(b) a state or local government agency that is engaged in the business of auctioning motor vehicles to dealers or the public.

(5) An entity issuing an in-transit permit under Subsection (4) shall maintain records of all in-transit permits obtained from the division. These records shall include:

(a) vehicle purchaser information;

(b) vehicle identification number; and

(c) evidence that the purchaser has met the requirements

for issuance of the in-transit permit.

(6) An entity described in Subsection (4) that fails to maintain the records required under Subsection (5) may be prohibited from issuing in-transit permits.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

(1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement made that concerns the offering of a motor vehicle for sale or lease.

(b) "Advertisement" includes any statement or representation:

(i) made in a newspaper, magazine, electronic medium, or other publication;

(ii) made on radio or television;

(iii) appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material;

(iv) contained in any window sticker or price tag; and

(v) in any oral statement.

(c) "Advertisement" includes the terms "advertise" and "advertising".

(d) "Advertisement" does not include:

(i) a statement made solely for the purpose of obtaining motor vehicle financing or a motor vehicle title; or

(ii) hand written negotiation sheets between a dealer and a customer of the dealer.

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

(a) Accuracy. Any advertised statements and offers about a motor vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

(b) Bait. Bait advertising and selling practices may not be used. A motor vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised motor vehicle.

(c)(i)(A) Price. When the price or payment of a motor vehicle is quoted, the motor vehicle shall be clearly identified as to make, year, model and if new or used. Except as provided in Subsection (c)(i)(B), the advertised price must include charges that the customer must pay for the motor vehicle, including freight or destination charges, dealer preparation, and dealer handling.

(B) The following fees are not required to be included in the advertised price that the customer must pay for the motor vehicle:

(I) dealer document fees;

(II) if optional, undercoating or rustproofing fees; and

(III) taxes or fees required by the state or a county, including sales tax, titling and registration fees, safety and emission fees, and waste tire recycling fees.

(ii) In addition to other advertisements, this pertains to price statements such as "\$.... Buys".

(iii) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

(iv) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price.

(d) Savings and Discount Claims. Because the intrinsic value of a used motor vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This

includes statements such as, "Was priced at \$....., now priced at \$....."

(i) The word "wholesale" may not be used in retail motor vehicle advertising.

(ii) When a motor vehicle advertisement contains an offer of a discount on a new motor vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the motor vehicle.

(e) Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the motor vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the motor vehicle without making any outlay of money.

(f) Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

(g)(i)(A) Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit, such as "we accept all credit applications", may not be used.

(B) If the amount of the advertised payment changes during the term of the loan, both the payments and the terms of the loan must be disclosed together.

(ii) The phrase "we will pay off your trade no matter what you owe" may not be used.

(h) Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe motor vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed motor vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

(i) Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to designate a used motor vehicle, or the text must clearly indicate that the motor vehicle offered is used.

(j) Demonstrators, Executives' and Officials' Motor Vehicles.

(i) "Demonstrator" means a motor vehicle that has never been sold or leased to a member of the public.

(ii) Demonstrator motor vehicles include motor vehicles used by new motor vehicle dealers or their personnel for demonstrating performance ability but not motor vehicles purchased or leased by dealers or their personnel and used as their personal motor vehicles.

(iii) A demonstrator motor vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new motor vehicle.

(iv) An executive's or official's motor vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These motor vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

(v) Demonstrator's, executive's and official's motor vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the motor vehicle offered for sale.

(k) Taxi-cabs, Police, Sheriff, and Highway Patrol Motor Vehicles. Taxi-cabs, police, sheriff, and highway patrol motor vehicles shall be so identified. These motor vehicles may not be described by an ambiguous term such as "commercial".

(l) Mileage Statements. When an advertisement quotes the

number of miles or a range of miles a motor vehicle has been driven, the dealer must have written evidence that the motor vehicle has not been operated in excess of the advertised mileage.

(i) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

(ii) If a dealer chooses to advertise specific mileage or a range of miles a motor vehicle has been driven, the dealer shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that motor vehicle so that the mileage can be readily verified.

(m) Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase motor vehicles for less so we can sell them for less", "highest trade-in allowance", "we give \$300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement and shall be produced upon request of a prospective purchaser, peace officer, or employee of the division.

(n) Free. "Free" may be used in advertising only when the advertiser is offering a gift that is not conditional on the purchase of any property or service.

(o) Driving Trial. A free driving trial means that the purchaser may drive the motor vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any motor vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

(p) Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

(q) Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle", and phrases of similar import may not be used.

(r) Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of motor vehicles and transactions shall be made in a clear and conspicuous manner.

(i) Fine print, and mouse print are not acceptable methods of disclosing material facts.

(ii) The disclosure must be made in a typeface and point size comparable to the smallest typeface and point size of the text used throughout the body of the advertisement.

(iii) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

(s) Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

(i) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the motor vehicle.

(ii) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

(iii) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money

is required to lease the motor vehicle.

(iv) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

(v) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

(t) Electronic Medium Disclosures. A disclosure appearing in any electronic advertising medium must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used.

(u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

(v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

(w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the motor vehicle.

(x) Special Status of Dealership. A motor vehicle advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

(y) Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer; however, for example requiring the consumer to bring a written offer made to that consumer by an authorized representative of a dealership on a substantially similar motor vehicle would be considered reasonable.

(z) Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with motor vehicles offered or sold at a bona fide auction.

(aa) Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio, television, or electronic medium advertisements may not convey or permit an erroneous or misleading impression as to which motor vehicle or motor vehicles are offered at featured prices.

(i) When an advertisement contains a picture of a motor vehicle along with a quoted price, the motor vehicle pictured must be a similar model with similar options and accessories as the motor vehicle advertised.

(ii) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

(iii) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(A) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(B) in terms that are understandable to the buying public; and

(C) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

(bb) An advertisement must disclose a salvage or branded title as prominently as the description of the advertised motor vehicle.

R877-23V-8. Signs and Identification Pursuant to Utah

Code Ann. Section 41-3-105.

(1) Every dealer, dismantler, manufacturer, remanufacturer, transporter, crusher, body shop, and distributor must post a sign at its principal place of business.

(2) The sign required under Subsection (1) shall:

(a) plainly display in a permanent manner the name under which the business is licensed;

(b) be at least 24 square feet in size, unless required otherwise, in writing, by a government entity; and

(c) be painted on the building, attached to the building with nails or bolts, or affixed to posts that have been securely anchored in the ground.

(3) A similar sign must be conspicuously posted at each additional place of business and must show, in addition, the address of the principal place of business. All signs must remain posted at each place of business and on the office. If the office is not located at the site on which the motor vehicles are displayed or offered for sale or exchange, the bonded dealer number, dismantler number, or manufacturer number must also be conspicuously displayed either on the sign or on the building.

(4) If the additional place of business is an auto show or similar business that will conduct business for ten days or less, the sign need only show the licensee's name as licensed by the division and be of a size that reasonably identifies the licensee.

(5) No place of business may be operated under a name other than that by which the licensee is licensed by the division. No sign may be posted at a place of business that shows a business name other than the one licensed by the division or gives the impression that the business is other than the one licensed by the division. However, a sign containing a variation of the licensee's name, if a variation of the licensee's name is required by a manufacturer in writing, may be posted as long as the sign containing the licensed name is more prominent.

(6) Documents submitted by a licensee to a government entity shall be identified only by the name under which the licensee is licensed by the division. All documents used by the licensee to promote or transact a sale or lease of a vehicle shall identify that licensee only by the name under which the licensee is licensed with the division.

R877-23V-10. Uniform Vehicle Identification Numbering System for Licensed Manufacturers Pursuant to Utah Code Ann. Section 41-3-202.

A. Except as provided in subsection (B), all manufacturers of motor vehicles licensed under Section 41-3-202 shall comply with the National Highway Traffic and Safety Administration's Standard No. 115, 49 C.F.R. Section 571.115 (1992), regarding 17-character vehicle identification number (VIN) requirements.

B. Manufacturers involved only in the second stage of a multi-stage vehicle are not required to comply with subsection (A) if the manufacturer of the first stage has complied with subsection (A).

R877-23V-11. License Information Update Pursuant to Utah Code Ann. Section 41-3-201.

A. Every person licensed under Section 41-3-202 shall notify the Motor Vehicle Enforcement Division (division) immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed.

B. The division may request the licensee to review information contained in the division's files and notify the division of any corrections that must be made.

R877-23V-12. Documents Required Prior to Issue of a License Pursuant to Utah Code Ann. Section 41-3-105.

The following items must be properly completed and presented to the division before a license is issued.

(1) New motor vehicle dealer or new motorcycle and small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) franchise verification from the manufacturer of each make of new motor vehicle to be offered for sale;

(e) pictures of the dealership, clearly showing the office, display space, and required sign;

(f) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(g) the fee required by Section 41-3-601;

(h) evidence that the place of business has been inspected by an authorized division employee or agent;

(i) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(2) Used motor vehicle dealer or used motorcycle and small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) pictures of the dealership, clearly showing the office, display space, and required sign;

(e) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(f) the fee required by law;

(g) evidence that the place of business has been inspected by an authorized division employee or agent;

(h) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(3) Manufacturer or remanufacturer license:

(a) application for license;

(b) evidence that the applicant has complied with the National Highway Traffic and Safety Administration's Motor Vehicle Safety Standard No. 115, regarding 17 character vehicle identification number (VIN) requirements;

(c) pictures of the principal place of business and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that a Utah sales tax license has been issued to the manufacturer or remanufacturer;

(f) evidence that the place of business has been inspected by an authorized division employee or agent.

(4) Transporter license:

(a) application for license;

(b) pictures of the principal place of business and required sign;

(c) the fee required by Section 41-3-601;

(d) if applicable, evidence that a Utah sales tax license has been issued to the transporter;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(5) Dismantler license:

(a) application for license;

(b) evidence that a Utah sales tax license has been issued for the dismantler;

(c) pictures of the principal place of business, clearly showing the office and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(6) Crusher license:

(a) application for license;

- (b) crusher bond as prescribed in Section 41-3-205;
- (c) pictures of the principal place of business, clearly showing the office and required sign;
- (d) the fee required by Section 41-3-601;
- (e) evidence that a Utah sales tax license has been issued for the crusher;
- (f) evidence that the place of business has been inspected by an authorized division employee or agent.
- (7) Salesperson license:
 - (a) application for license;
 - (b) picture of the applicant;
 - (c) fingerprints of the applicant and the fees and waiver required by the Department of Public Safety for the processing of fingerprints;
 - (d) the fee required by Section 41-3-601.
- (8) Distributor, factory branch, distributor branch, or representative license:
 - (a) application for license;
 - (b) the fee required by Section 41-3-601;
 - (c) pictures of the principal place of business, clearly identifying the office and required sign;
 - (d) evidence that a Utah sales tax license has been issued for the distributor;
 - (e) evidence that the place of business has been inspected by a authorized division employee or agent.
- (9) Body shop license:
 - (a) application for license;
 - (b) body shop bond as prescribed in Section 41-3-205;
 - (c) pictures of the principal place of business, clearly showing the office and required sign;
 - (d) the fee required by Section 41-3-601;
 - (e) evidence that a Utah sales tax license has been issued for the body shop;
 - (f) evidence that the place of business has been inspected by an authorized division employee or agent.
- (10) New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

- (1) Only fees required by Title 41, Chapter 1a, may be identified as state-mandated fees.
- (2) A dealer that charges the purchaser or lessee of a motor vehicle a fee for preparing or processing any state-mandated documents or services ("dealer documentary service fees") must, in addition to the requirements set forth in Subsection (1), prominently display a sign on the dealer premises in a location that is readily discernable by all purchasers and lessees. The sign shall contain the language set forth in Subsection (2)(a).
 - (a) The (dealer documentary service fee) () as set forth in your contract represents costs and profit to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or state mandated by state statute or rule.
 - (b) The blank in Subsection (2)(a) may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in the dealer's contract of sale or lease agreement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

A. A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced only after it has expired.

B. The replaced special plate shall be included in the calculation of special plates a dealer may be issued under

Section 41-3-503.

R877-23V-18. Qualifications for a Salvage Vehicle Buyer License Pursuant to Utah Code Ann. Section 41-3-202.

A. An applicant for a salvage vehicle buyer license shall provide to the division:

- 1. evidence that the applicant is licensed in any state as a motor vehicle dealer, dismantler, or body shop;
- 2. a list of any previous motor vehicle related businesses in which the applicant was involved;
- 3. evidence that the applicant has business experience in buying, selling, or otherwise working with salvage vehicles;
- 4. evidence that the applicant understands and complies with statutes and rules relating to the handling and disposal of environmental hazardous materials associated with salvage vehicles under Title 19, Chapter 6, Hazardous Substances; and
- 5. evidence that the applicant has complied with the provisions of Title 41, Chapter 3, Motor Vehicle Business Regulation Act, or similar laws of another state.

R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209.

There is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law listed under Subsection 41-3-209(2) if the license applicant:

- (1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law listed under Subsection 41-3-209(2);
- (2) has completed any court-ordered probation or parole;
- (3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and
- (4) paid any required restitution and fines.

R877-23V-21. Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105.

(1) "Automated license plate recognition system" (ALPR) means the computer-based system that utilizes special cameras to capture a color image, as well as an infrared image, of the license plate of a passing vehicle.

(2) "Criminal justice agency" is as defined in Section 53-10-102.

(3) Information in the ALPR system may be retained for a period of one year.

(4) Access to the information obtained from the ALPR system is restricted to:

- (a) a criminal justice agency;
- (b) a noncriminal justice agency or individual authorized by statute, or commission rule; and
- (c) an agency or individual that has an agreement with a criminal justice agency, as authorized by the executive director of the commission.

(5) Information obtained from the ALPR system may be used only for law enforcement purposes.

(6) Information in the ALPR system is a protected record under Section 63G-2-305.

R877-23V-22. Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704.

(1)(a) Reasonable cause to reduce or compromise a penalty imposed by the division under Title 41, Chapter 3 may include a penalty imposed under Section 41-3-702 for a second or subsequent offense that is issued for a violation that occurred before the division notifies the party of the penalty for the initial offense.

(b) A person seeking to reduce or compromise a penalty under Subsection (1)(a) shall:

(i) demonstrate that there is reasonable cause to reduce or compromise the penalty; and

(ii) recommend the amount by which the penalty should be reduced or compromised.

(2) A penalty that is reduced or compromised under Subsection (1) may not be reduced or compromised below the penalty imposed for a first offense for that violation.

(3) Reasonable cause to waive, reduce, or compromise a penalty imposed by the division under Title 41, Chapter 3 does not include:

(a) ignorance of the law; or

(b) inability to pay a penalty imposed.

(4) Nothing in this rule prevents a person from appealing the appropriateness of a penalty imposed by the division under Title 41, Chapter 3.

KEY: taxation, motor vehicles

June 14, 2012

Notice of Continuation January 3, 2012

41-1a-712

41-3-105

41-3-201

41-3-202

41-3-210

41-3-301

41-3-302

41-3-305

41-3-503

41-3-505

41-3-506

41-3-507

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 process, 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 complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 504;
- (ii) successfully complete a comprehensive valuation practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

- a) creation of a new facility;
- b) acquisition of personal property; or
- c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of

this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the

cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown

parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to

the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

- (i) a net annexation value less than zero; and
- (ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of

central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to

the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b). (c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(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%

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 listed 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 leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(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. share-down of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar

year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.
2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by

.015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary

Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:
 (a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by

the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return

on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is

calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

- (A) subtracting intangible property;
- (B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and
- (C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, 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;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(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 pricing guide, 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 pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, 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 guide.

(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 pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

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. County Board of Equalization Procedures and Appeals 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;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(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) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(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) 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 indicating the evidence or documentation that the taxpayer will present to the county board of equalization.

(4) If the signed statement required under Subsection (3)(e) is not 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.

(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the minimum information required under Subsection (3) is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under Subsection (3)(e), the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects 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.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), 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.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) 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.

(16) 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 That is At or Below the Statutorily Prescribed Amount 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 that is at or below the statutorily prescribed amount.

(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 that is at or below the statutorily prescribed amount 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 taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

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
June 14, 2012 Art. XIII, Sec 2
Notice of Continuation January 3, 2012**

- 9-2-201
- 11-13-302
- 41-1a-202
- 41-1a-301
- 59-1-210
- 59-2-102
- 59-2-103
- 59-2-103.5
- 59-2-104
- 59-2-201
- 59-2-210
- 59-2-211
- 59-2-301
- 59-2-301.3
- 59-2-302
- 59-2-303
- 59-2-303.1
- 59-2-305
- 59-2-306
- 59-2-401
- 59-2-402
- 59-2-404
- 59-2-405
- 59-2-405.1
- 59-2-406
- 59-2-508
- 59-2-514
- 59-2-515
- 59-2-701
- 59-2-702
- 59-2-703
- 59-2-704
- 59-2-704.5
- 59-2-705
- 59-2-801
- 59-2-918 through 59-2-924
- 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
- 59-2-1330
- 59-2-1347
- 59-2-1351

59-2-1365

R920. Transportation, Operations, Traffic and Safety.**R920-50. Ropeway Operation Safety.****R920-50-1. Purpose.**

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11), and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other

than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;

(ii) Bullwheel;

(iii) Brake System;

(iv) Tower Structure;

(v) Sheave, Axle, or Sheave Assembly;

(vi) Carrier; and

(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A

Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of \$300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-5. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

- (a) Annual General Inspection Report;
- (b) Annual registration fee;
- (c) Approved request for exception, if applicable;
- (d) Certification of Compliance; and
- (e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

- (a) Annual registration fee;
- (b) Approved request for exception, if applicable;
- (c) Certification of Compliance;
- (d) Certificate of Insurance;
- (e) Certifications required in R920-50-6;
- (f) Documents required in R920-50-7; and
- (g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, manufacture and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in

the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Manufacture for a passenger ropeway must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the newly manufactured parts used in this ropeway, or ropeway modification, conform with the Utah Passenger Ropeway Safety Act, Governing Standard, the Utah Ropeway Operation Safety Rule and the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(6) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before

acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11.2 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B77.1, 2011" and "ANSI B77.2, 2004" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI

B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel shall be qualified in accordance with American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

(b) Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, whichever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers,

and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1-2006, 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b) shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

(16) "Existing Installations - Annex F" ANSI B77.1-2011 Section 1.2.4.1 Existing installations is modified by the following: Operation and maintenance is not required to comply with normative Annex F Combustion engine(s) and fuel handling.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(e) Existing Installations - Annex F R920-50-10(16); effective June 7, 2012.

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or

methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(15) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; manufacture; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance

inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits

**June 7, 2012 72-11-201 through 72-11-216
Notice of Continuation April 16, 2012**

R982. Workforce Services, Administration.**R982-101. Americans with Disabilities Complaint Procedure.****R982-101-100. Authority and Purpose.**

(1) The legal authority for these rules is found in U. C. A. Sections 35A-1-104 and 63G-3-201(3) and Title II of the Americans with Disabilities Act (ADA).

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

(3) The Department will provide prompt and equitable resolution of all complaints filed with, received by, or referred to the Department by qualified individuals with disabilities arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department.

R982-101-101. Definitions.

(1) "ADA coordinator" (coordinator) means the Department's coordinator or coordinators who have responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals alleging discrimination in the receipt of services or work accommodation due to disability.

(2) "Executive Director" (Director) means the chief administrative officer of the Department appointed by the governor pursuant to Utah Code Ann. 35A-1-201(1)(a) or the Director's designee.

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

(4) "Qualified individual with a disability" The Department adopts the definition in Title II of the ADA. The term generally means a person who has a disability which limits one or more major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department or who, with or without reasonable accommodation, can perform the essential functions of the position in the Department, or who would otherwise be an eligible applicant for vacant positions with the Department, as well as those who are employees of the Department.

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

R982-101-102. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of the complaint procedure under this rule, shall be classified as protected as defined under Section 63G-2-305 until the coordinator, Director, or designee issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. The written decision of the coordinator, Director or designee shall be classified as protected information.

R982-101-103. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other

federal law, Utah law or the common law that provides equal or greater protection for the rights of individuals with disabilities.

R982-101-104. Appointment of ADA Coordinator.

The Director shall appoint one or more persons as the ADA coordinator to investigate and resolve complaints filed by qualified individuals with disabilities.

R982-101-200. Filing of Complaints by Department Employees or Applicants for a Vacant Position.

(1) A complaint shall be filed in a timely manner to assure prompt, effective investigation, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint may be filed by a qualified individual with a disability with any Division, Office or Regional Office of the Department or directly with the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual. Complaints filed locally are to be forwarded immediately to the coordinator. If filed directly with the coordinator it should be delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 East 300 South
Salt Lake City, UT 84145-0249

(3) Each complaint shall be in writing or in another accessible format suitable to the individual and include:

- (a) the individual's name and address;
- (b) the nature and extent of the individual's disability;
- (c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;
- (d) a description of the action and accommodation desired;

and,

- (e) be signed by the individual or legal representative.

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

(5) With or without exhausting Department procedures, individuals may also file complaints alleging discrimination in employment with:

Utah Anti-Discrimination and Labor Division
160 East 300 South
Salt Lake City, UT 84114
or,
Equal Employment Opportunity Commission
4520 North Central Avenue, Suite 300
Phoenix, AZ 85012-1848
Phone 602-640-2598

R982-101-201. Investigation and Resolution of Employee Complaints.

(1) The coordinator shall conduct an investigation of each complaint received.

(2) Within 15 working days after receiving the complaint, the coordinator shall either issue a decision in writing stating the action that will be taken on the complaint, that no action will be taken on the complaint, or notify the complainant in writing that the decision is being delayed and the amount of additional time needed to issue a decision.

(3) The party initiating the complaint and the Department may agree in writing to waive or extend the time limits set forth in the complaint process.

R982-101-202. Appeals of Employee Complaints.

(1) The complainant may appeal the decision of the coordinator by filing an appeal within five working days from the receipt of the decision. The appeal shall be in writing or in another accessible format suitable to the individual.

(2) The filing of an appeal shall be considered as

authorization by the complainant to allow review of all information, including information classified as other than public information, by the Director.

(3) 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.

(4) The Director shall review the coordinator's findings and decision and may conduct an additional investigation.

(5) The Director shall either issue a decision within ten working days of receipt of the appeal, or shall notify the complainant in writing or in another accessible format suitable to the individual that the decision is being delayed and the amount of additional time needed to issue a decision.

(6) Nothing in this rule relieves the complainant from complying with or assisting in the complaint process by providing information necessary to make a decision on the complaint.

(7) Nothing in this rule requires the Director to gather information or seek documentation to support the complaint.

(8) The decision issued by the Director shall constitute the final agency action.

(9) The Director may appoint a designee other than the coordinator to fulfill the Director's obligations under this rule.

R982-101-300. Filing of Complaints by Clients.

(1) The Department will resolve all written complaints filed by a qualified individual with a disability with the Department arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department. Complaints shall be made on a form as developed by the Department.

(2) All client complaints shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(3) The complaint may be filed with any Division, Regional Office or Local Office of the Department or directly with the coordinator. Complaints filed locally are to be forwarded immediately to the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 E 300 South
Salt Lake City, UT 84145-0249

(4) Each complaint shall include:

- (a) the individual's name and address;
- (b) the nature and extent of the individual's disability;
- (c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;
- (d) a description of the action and accommodation desired;

and,

(e) be signed by the individual or 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.

(6) With or without exhausting Department procedures, complainants may also file complaints alleging discrimination in the delivery of services with:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW Room N4123
Washington, D.C. 20210; or
Office of Civil Rights
U.S. Department of Health and Human Services
Federal Office Building
1961 Stout Street
Denver, CO 80295-3538

Or, for employment related complaints based on disability:
Utah Anti-Discrimination and Labor Division
160 East 300 South
Salt Lake City, UT 84114; or
Equal Employment Opportunity Commission
4520 North Central Avenue, Suite 300
Phoenix, AZ 85012-1848
Phone 602-640-2598.

R982-101-301. Investigation of Client Complaints.

(1) The coordinator shall document the filing of the complaint and shall assemble all the necessary information to process the complaint.

(2) When conducting the investigation, the coordinator may seek assistance from the Attorney General or any Department employee or other person or agency in determining what action, if any, shall be taken on the complaint.

R982-101-302. Issuance of Decisions and Appeal Rights of Client Complaints.

The coordinator shall issue a decision in writing or other accessible format suitable to the individual within 90 days from the date the complaint was received by the Department. The decision shall inform the parties of their appeal rights and the procedure for filing an appeal. The decision shall outline what action was taken or will be taken, if any.

KEY: disabilities, complaints

January 1, 2003

Notice of Continuation June 12, 2012

35A-1-104

R982. Workforce Services, Administration.**R982-201. Government Records Access and Management Act.****R982-201-101. Request for Access to Department of Workforce Services Records.**

1. Authority. As required by Subsection 63G-2-204(2)(d), this rule specifies where and to whom a request for access of Department of Workforce Services (DWS) records shall be directed.

2. Definition. Words used in R982-201 are defined in Section 63G-2-103.

3. Requests for Access.

a. All requests for records shall be submitted in accordance with Subsection 63G-2-204(1).

b. A person may submit a request for a record to any DWS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown or not available in the office where the request is filed, the request will be sent immediately to the appropriate Employment Center or administrative office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Workforce Services, Records Manager.

4. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Workforce Services, Records Manager, or Public Information Officer.

R982-201-102. Fee Schedule for Records Copies.

1. Authority. Pursuant to Section 63G-2-203, the Department will charge fees for the copying and compiling of records, and may waive fees as specified in this rule.

2. Fee Rates. For records which are reproducible in their current form the fee charged for making copies shall be established by the Executive Director in accordance with Section 63G-2-203(1).

3. Payment Waiver.

a. The right to waive payment of fees for copying records shall reside with the staff in the Employment Center or administrative office. No fees shall be charged for reviewing a record or inspecting a record according to Subsections 63G-2-203(4)(a) and (b).

b. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Sections 63G-2-301 through 63G-2-305.

R982-201-103. Appellate Requests, Research Requests and Intellectual Property Access Requests.

1. Authority. As required by Subsection 63G-2-401(9), this rule specifies where and to whom appeals on records access denials may be directed and Subsection 63G-2-201(10) to whom and where requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights, Subsection 63G-2-202(8) regarding requests for access for research purposes may be submitted.

2. Appeals and Special Requests.

a. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Workforce Services.

b. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the Department of Workforce Services.

3. Discretionary Access Authority. Notwithstanding Section 35A-4-312 of the Employment Security Act and other

state or Federal statute or Federal rules and as specified in Subsection 63G-2-201(5)(b) decisions regarding discretionary access to records that are private, or protected under Sections 63G-2-302 and 63G-2-305 where the public interest to know exceeds the right of privacy shall be determined by the Executive Director or designee of the Executive Director.

R982-201-104. Records Modification and Clarification.

1. Authority. Section 63G-2-603 Governmental Records Access and Management Act and Section 63G-4-202 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

2. Hearings. Hearings on disputed records accuracy shall be conducted informally.

KEY: records**November 6, 1997****Notice of Continuation June 12, 2012****35A-1-104**

R982. Workforce Services, Administration.**R982-301. Councils.****R982-301-101. General Definitions.**

1. Employer. This rule adopts the definition of employer as used in Section 35A-4-203 except that for purposes of this rule, and for purposes of membership on the State Council on Workforce Services, also known as the State Workforce Investment Board an employer shall be a for-profit enterprise.

2. Median sized employer. The median sized employer shall be calculated, based on the previous calendar year, by the Workforce Research and Analysis Division each June 30. The median sized employer is determined by arranging the establishments in an array by number of employees including the number of employees in each employer size interval, and choosing the employer in the array that employs the middle number of employees.

3. Attendance. Pursuant to Subsection 35A-2-103(6)(b), a council member may be considered present at the meeting when given permission by the council chair to participate in the business of the meeting by videoconference or teleconference.

4. Conflict of Interest. Prior to voting on any matter before a council, a council member must disclose and declare for the council records any direct financial benefit the member would receive from a matter being considered by the council.

R982-301-102. State Council on Workforce Services.

1. Authority. As required by Subsections 35A-1-206(2)(a)(iv)(A) and 35A-1-206(2)(a)(iv)(B), this rule defines Small Employers and Large Employers for membership on the State Council on Workforce Services.

2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the state.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the state.

c. "Median Sized Employer" as used in R982-301-102(2)(a) and R982-301-102(2)(b) is based solely on the number of employees an employer has in his/her employ in the state during the calendar year.

d. "Rural employer" means an employer whose primary worksite is located in a rural area outside the Wasatch Front as determined by the Department.

e. Council membership shall include a large and a small rural employer.

KEY: councils

August 18, 2011

35A-1-104(1)

Notice of Continuation June 12, 2012 35A-1-206(2)(a)(iv)(A)

35A-1-206(2)(a)(iv)(B)

35A-2-103(2)(a)(i)

35A-2-103(2)(a)(ii)

R982. Workforce Services, Administration.**R982-601. Provider Code of Conduct.****R982-601-101. Statement of Purpose.**

The Provider Code of Conduct is written in addition to all Department of Workforce Services policies, rules and regulations governing delivery of services to clients. The purpose of the code is to protect vulnerable clients from abuse, neglect, maltreatment and exploitation. The Code of Conduct clarifies the expectation of conduct for providers of contracted, licensed and certified programs and their employees, which includes administrative staff, non direct care staff, direct care staff, support services staff and any others when interacting with clients. Written agency policy required by this code must be approved by the licensing or certifying authority. Nothing in this Code shall be interpreted to mean that clients should not be held accountable for misbehavior or inappropriate behavior on their part, or that providers are restricted from instituting suitable consequences for such behavior.

R982-601-102. Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment Prohibited.

A. No contracted, licensed or certified agency, individual, employee shall abuse, sexually abuse or sexually exploit, neglect, exploit or maltreat; (as defined below) any client.

1. No person shall cause physical injury to any client. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

2. No person by acting, failing to act, encouragement to engage in, or failure to deter from will cause any client to be subject to abuse, sexual abuse or sexual exploitation, neglect, exploitation, or maltreatment.

3. No person shall engage any client as an observer or participant in sexual acts.

4. A person may not make clearly improper of a client or their resources for profit or advantage.

B. Failure to comply with this Code of Conduct may result in corrective action, probation, suspension, and/or termination of contract, license or certification, in accordance with administrative procedures act and Department of Workforce Services regulations.

R982-601-103. Definition of Client.

Any person under the age of 18 years; and any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, use of drugs, intoxication, or other cause, to the extent that he is unable to care for his own personal safety, health or medical care; and is a participant in, or a recipient of a program or service contracted with, or licensed or certified by the Department of Workforce Services.

R982-601-104. Definitions of Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment.

A. Abuse of clients may include, but is not limited to:

1. Harm or threatened harm, meaning damage or threatened damage to the physical or emotional health and welfare of a client such as failure.

2. Unlawful confinement.

3. Deprivation of life-sustaining treatment.

4. Physical injury including, but not limited to, any contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

5. Any type of physical hitting or corporal punishment inflicted in any manner upon the body.

B. Sexual abuse and sexual exploitation will include, but

not be limited to:

1. Engaging in sexual intercourse with any client.

2. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

3. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

4. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

5. Committing or attempting to commit acts of sodomy or molestation with a client.

6. This definition is not to include therapeutic processes used in the treatment of sexual deviancy or dysfunction which have been outlined in the clients treatment plan and is in accordance with written agency policy.

C. Neglect may include but is not limited to:

1. Denial of sufficient nutrition.

2. Denial of sufficient sleep.

3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate supervision; including impairment of employee resulting in inadequate supervision. Impairment of an employee may include but is not limited to use of alcohol and drugs, illness, sleeping.

5. Failure to arrange for medical care and/or medical treatment as prescribed or instructed by a physician when not contraindicated by agency after consultation with agency physician.

6. Denial of sufficient shelter, except in accordance with the written agency policy.

D. Exploitation will include, but is not limited to:

1. Utilizing the labor of a client without giving just or equivalent return except as part of a written agency policy which is in accordance with reasonable therapeutic interventions and goals.

2. Using property belonging to clients.

3. Acceptance of gifts as a condition of receipt of program services.

E. Maltreatment will include, but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except in accordance with an individual's service plan and written agency policy.

2. Chemical, mechanical or physical restraints except when authorized by individual's service plan and administered by appropriate personnel or when threat of injury to the client or other person exists.

3. Assignment of unduly physically strenuous or harsh work.

4. Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements when used solely as a means of punishment.

5. Group punishments for misbehaviors of individuals except in accordance with the written agency policy.

6. Verbal abuse by agency personnel: engaging in language whose intent or result is demeaning to the client except in accordance with written agency policy which is in accordance with reasonable therapeutic interventions and goals.

7. Denial of any essential program service solely for disciplinary purposes except in accordance with written agency policy.

8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes except in accordance with written agency policy.

9. Requiring the individual to remain silent for long periods of time solely for the purpose of punishment.

10. Extensive withholding of emotional response or stimulation.

11. Exclusion of a client from entry to the residence except in accordance with the written agency policy.

R982-601-105. Reporting Requirements.

Any contracted, licensed or certified agency, individual, or employee is responsible to document and report abuse, sexual abuse and sexual exploitation, neglect, maltreatment and exploitation as outlined in this Code and cooperate fully in any resulting investigation.

1. Any person will immediately report abuse, sexual abuse and sexual exploitation, neglect, maltreatment or exploitation by contacting the local Regional Office within 24 hours. During weekends and on holidays such reports will be made to the Regional Office On-call worker.

2. All reports and documentation made regarding situations of abuse, sexual abuse and sexual exploitation, neglect, and exploitation will be made available upon request, or with court order when required by federal regulations, to appropriate Department of Workforce Services personnel and law enforcement.

3. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

4. A poster, provided by the Department of Workforce Services, notifying contractor employees of their responsibilities to report violations and giving appropriate phone numbers, is required to be prominently displayed in all contractor facilities.

KEY: economic development, training programs, code of conduct, unemployed workers

July 1, 1997

35A-1-104(1)

Notice of Continuation June 12, 2012

35A-1-104(2)

R986. Workforce Services, Employment Development.**R986-900. Food Stamps.****R986-900-901. Authority for Food Stamps and Applicable Rules.**

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: <http://www.fns.usda.gov/fsp/>. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(o) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPTP, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(p) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(q) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) are unemployed for less than 6 months;

(iv) live more than 35 miles from an employment center;

(v) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(vi) are not appropriate for E and T as determined by a manager or designee;

(vii) are age 47 through the month of their 60th birthday;
 (viii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(ix) have current domestic violence issues;
 (x) have limited language skills or individuals whose primary language is other than English;
 (xi) lack public and/or private transportation;
 (xii) are in the application or appeals process for SSI;
 (xiii) work 80 hours a month regardless of the amount earned;

(A) if the individual is working less than 80 hours a month but is making at least minimum wage times 80 hours per month, the individual is considered to be meeting the 80 hours per month exemption

(B) if an individual is self-employed and working less than 80 hours a month, the gross income before expenses must be minimum wage times 80 hours a month. An individual working but being paid in-kind does not meet this exemption.

(xiv) have no fixed address;
 (xv) do not have a GED or high school diploma;
 (xvi) are pregnant regardless of trimester;
 (xvii) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or

(xviii) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(r) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over \$25 or a change in the source of unearned income.

(c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not

be changed.

(h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(i) The Department will hold disqualification hearings by telephone.

(j) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(k) The federal regulation that requires all interviews be scheduled for a specific date and time is waived for initial telephone interviews. This allows clients to call anytime Monday through Thursday from 8 a.m. to 5 p.m. to complete the required initial interview.

(l) To meet the student work exemption, a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The prior hours must be averaged over the 30 days immediately prior to the date of application or recertification.

**KEY: food stamps, public assistance
 July 1, 2012
 Notice of Continuation September 8, 2010**

35A-3-103

R994. Workforce Services, Unemployment Insurance.**R994-405. Ineligibility for Benefits.****R994-405-1. Determining the Reason for Separation.**

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

R994-405-2. Separations From a Temporary Help Company (THC).

THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.

(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.

(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.

(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.

(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.

(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.

(6) If the THC refuses to send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.

R994-405-3. Professional Employer Organizations (PEO).

(1) PEO is defined in R994-202-106 and must be licensed pursuant to Sections 31A-40-301 through 306. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not

of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

R994-405-101. Voluntary Leaving (Quit) - General Information.

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),

(b) a suspension, or

(c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

R994-405-102. Good Cause.

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the claimant was required by the employer to violate state or federal law or if the claimant's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

R994-405-103. Equity and Good Conscience.

(1) If the good cause standard has not been met, the equity and good conscience standard must be considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant:

(a) acted reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action, and,

(b) demonstrated a continuing attachment to the labor market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. An active work search, as provided in R994-403-113c, should have commenced immediately after the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the claimant to seek work. Some circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

(1) Except as provided in subsection (3) if a claimant quit work to join, accompany, or follow a spouse or significant other to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

(3)(a) A claimant who quits to accompany or follow his or her spouse to a new locality can establish good cause for quitting if the claimant can show all of the following:

(i) the claimant's spouse is a member of the United States armed forces and has been relocated by a full time assignment scheduled to last at least 180 days while on active duty as defined in 10 U.S.C. Sec. 101(d)(1) or active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6),

(ii) it is impractical for the claimant to commute to the previous work from the new locality, and

(iii) the claimant otherwise meets and follows the eligibility and reporting requirements including R994-403-112c(2)(a)(i).

(b) A claimant who is eligible under this subsection will be denied benefits for the limited period of time the claimant could have continued working up to 15 days before the scheduled start date of the spouse's active duty assignment as it is considered to be a failure to accept all available work as required under subsection 35A-4-403(1)(c).

(c) This subsection only applies to claims filed or reopened on or after May 6, 2012.

R994-405-105. Burden of Proof in a Quit.

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If a claimant leaves work prior to the date of an

impending reduction of force, the separation is a quit. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting benefits will be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) If the claimant quit to avoid a disqualifying discharge the separation will be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a quit unless the claimant was previously disqualified as a result of the suspension.

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed and the separation is adjudicated as a quit, even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge or lay off the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a claimant resigns but later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

(7) If an employer tells a claimant it intends to discharge the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

R994-405-107. Examples of Reasons for Quitting.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. However, if the new work is later determined to have been unsuitable and it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification will be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

If, after giving notice but prior to leaving the first job, the claimant learns the new job will not be available when promised, permanent, full-time, or suitable, good cause may be established if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits will be denied for failure to accept all available work from the prior employer under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the claimant made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, the work must conflict with a sincerely held religious or moral conviction. If a claimant was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place

of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and gives the employees the option to volunteer for the layoff, those who

do volunteer are separated due to reduction of force regardless of incentives.

R994-405-108. Effective Date of Disqualification and Period of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-109. Proximate Cause in a Quit.

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

R994-405-201. Discharge - General Definition.

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits will be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the claimant. A reduction of force is considered a discharge without just cause.

R994-405-202. Just Cause.

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The claimant must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown the claimant should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the claimant had knowledge of the expected conduct. After a warning the claimant should have been given an opportunity to correct the objectionable conduct.

If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof in a Discharge.

In a discharge, the employer initiates the separation and therefore has the burden to prove there was just cause for discharging the claimant. The failure of the employer to provide information will not necessarily result in a ruling favorable to the claimant. Interested parties have the right to rebut information contrary to their interests.

R994-405-204. Quit or Discharge.

The circumstances of the separation as found by the Department determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice, or the claimant's report are not controlling.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If a claimant leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. A claimant may not escape a disqualification under the discharge provisions,

Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation is considered a discharge.

(3) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

R994-405-205. Disciplinary Suspension.

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the claimant fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximate Cause - Relation of the Offense to the Discharge.

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged a claimant because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the claimant's conduct. If a claimant files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a claimant's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

R994-405-208. Examples of Reasons for Discharge.

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If a claimant violates a reasonable employment rule and just cause is established, benefits will be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a claimant believes a rule is unreasonable, the claimant generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a claimant was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct do not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a claimant to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the claimant's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied regardless of whether the claimant would have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or

impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a claimant, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When a claimant engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the welfare of the general public, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and that was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his or her separation was consistent with the employer's written drug and alcohol

policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-210. Discharge for Crime - General Definition.

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, the term "crime" as used in these sections, includes "misdemeanors". An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established the claimant was discharged for a crime that:

- (a) was in connection with work,
- (b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and
- (c) was admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

R994-405-211. In Connection with Work.

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

R994-405-212. Dishonesty or Other Disqualifying Crimes.

(1) For the purposes of this subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

- (a) obtaining or exerting unauthorized control over property;
 - (b) obtaining control over property by threat or deception;
 - (c) obtaining control knowing the property was stolen;
- and,

(d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors are also disqualifying even if they are not theft-related such as assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

R994-405-213. Admission or Conviction in a Court.

(1) An admission offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

R994-405-214. Disqualification Period.

The 52-week disqualification period for Subsection 35A-4-405(2)(b) begins the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

R994-405-215. Deletion of Wage Credits.

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

R994-405-216. Cancellations Not Allowed.

If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work, the claim will be established for 52 weeks and cannot be canceled as provided in R994-403-102a(3).

R994-405-301. Failure to Apply for or Accept Suitable Work.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

- (a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

- (i) accept a referral, or
- (ii) properly apply for work, or
- (iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

- (a) the job is not suitable;
- (b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or
- (c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral occurs when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

- (1) meet with the employer at the designated time and place,
- (2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought,
- (3) present no unreasonable conditions or restrictions on acceptance of the available work and
- (4) report for and pass a drug test if necessary.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) Working Conditions.

"Working conditions" refers to the provisions of the

employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

(4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does

not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-307. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

R994-405-308. Burden of Proof.

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification

must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be contrary to equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) begins the Sunday of the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there are mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the decision

to refuse the offer of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

R994-405-401. Strike.

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

R994-405-402. Elements Necessary for a Disqualification.

All of the following elements must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment;

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

R994-405-403. Unemployment Due to a Strike.

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike;

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations,

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the

employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required,

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration, or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike;

(a) the claimant was separated from employment for some other reason that occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when;

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions,

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called., or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

R994-405-405. Fomented by the Employer.

A strike will not result in a denial of benefits to claimants if the employer or any of its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

R994-405-406. Work Stoppage.

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

R994-405-407. Grade, Group or Class of Worker.

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute,

(b) the claimant was an employee of a company that has no work for him or her as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.

If the strike was caused by the employer's failure to comply with state or federal laws governing wages, hours, or working conditions, the claimant is not disqualified as a result of the strike. However, to establish the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

R994-405-409. Period of Disqualification.

The period of disqualification begins on the effective date of the new or reopened claim and continues as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be

assessed.

R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike that are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his or her unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the request for a redetermination is made.

R994-405-411. Availability.

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability that will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

R994-405-412. Suitability of Work Available Due to a Strike.

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits will not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-413. Strike Benefits.

Strike benefits received by a claimant, which are paid contingent upon walking a picket line or for other services, are reportable income that must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury that requires no personal services is not reportable income.

R994-405-701. Payments Following Separation - General Definition.

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance

payments do not meet the statutory definition of wages.

R994-405-702. Definition of Disqualifying Vacation and Severance Pay.

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the employer to assign such payment to a particular week on the payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will be established as appropriate.

(2) Vacation Pay.

Vacation pay is not considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. Accrued sick leave, paid at the time of separation not because of an illness or injury is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent

separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant would have a full week of pay for the second week, and would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the last day of work is equivalent to the number of days during which the worker would have received a similar amount of his or her regular pay. For example, if the claimant received \$500 in severance pay, and last earned \$10 an hour working a 40 hour week, the claimant's customary weekly earnings were \$400 a week. The claimant is denied benefits for one week and must report \$100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) Payments Less than Weekly Benefit Amount. If separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

R994-405-703. Period of Disqualification.

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

R994-405-704. Disqualifying Separations.

If the claimant has been disqualified as the result of his or her separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

R994-405-705. Base Period Wages.

Vacation pay is used as base period wages. Separation payments attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208. Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

R994-405-801. Services in Education Institutions - General Definition.

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and the reason for the unemployment is not due to normal school recesses or paid sabbatical leave.

R994-405-802. Elements Required for Denial.

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

R994-405-803. Educational Institution (School).

(1) To be considered an educational institution it is not necessary the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" that meets all of the following elements:

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training is academic, technical,

trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or licensed to operate as a school by the State Board of Education or other government agency authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

R994-405-804. Employee for an Educational Institution.

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also, employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school district, he or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a request for a revision to include school employment.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or

she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

R994-405-806. Substitute Teachers.

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

R994-405-901. Professional Athletes.

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete

for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

- (i) a multi-year contract with a professional sports organization, league or association;
- (ii) a year-to-year contract and no indication of release;
- (iii) no contract but the employer affirms intent to recall;
- (iv) no contract but an employer representative confirms that the claimant is being considered for next season; or
- (v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

R994-405-902. Base Period Wage Credits.

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

R994-405-1001. Aliens - General Definition.

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the claimant is a citizen or national of the United States, or if not, whether the claimant is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

R994-405-1002. Alien Status.

(1) An alien may establish wage credits and qualify for benefit payments if he or she was:

- (a) Lawfully admitted for permanent residence at the time

the services were performed, or

(b) Lawfully present for the purpose of performing the services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

R994-405-1003. Lawfully Admitted for Permanent Residence.

A claimant who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by the US Citizenship and Immigration Services (USCIS).

R994-405-1004. Lawfully Present for the Purpose of Performing Services.

These are aliens with work permits issued by USCIS who have received permission to work in the United States. Aliens who do not possess USCIS documentation have not been processed through USCIS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by USCIS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

R994-405-1005. Permanently Residing in U.S. Under Color of Law.

Eligibility can be established if:

(1) The USCIS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the USCIS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the USCIS as individuals who are permanently residing "under color of law."

R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave who are admitted on parole for medical treatment. All of these individuals are issued USCIS forms endorsed to show work status.

R994-405-1007. Procedural Requirements.

(1) Verification of Status.

If the claimant states he or she is an alien, the claimant must present documentary evidence of alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from USCIS that contains the claimant's alien admission number or alien file number, or

(b) Other documents that constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the USCIS through an automated system or other system designated by the USCIS.

This system must protect the claimant's privacy as required by law. The Department must use the claimant's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to USCIS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the USCIS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances that would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

R994-405-1008. Preponderance of Evidence.

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while USCIS is being contacted for verification.

R994-405-1009. Availability for Work.

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination the alien is deportable.

R994-405-1010. Periods of Ineligibility.

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, the

claimant is ineligible under Subsection 35A-4-403(1)(c) because he or she cannot legally obtain employment.

KEY: unemployment compensation, employment, employee's rights, employee termination

July 1, 2012

Notice of Continuation June 26, 2007

35A-4-502(1)(b)

35A-1-104(4)

35A-4-405